RECORD, CASE No. 13,847.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 287.

JAMES P. STONEROAD, PLAINTIFF IN ERROR,

vs.

GEORGE W. STONEROAD.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED OCTOBER 21, 1889.

RECORD, CASE No. 13,847.

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OCTOBER TERM, 1892.

TERM No., 237.

JAMES P. STONEROAD, PLAINTIFF IN ERROR,

vs.

GEORGE W. STONEROAD.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 5, 1893.

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a In the Supreme Court of the Territory of New Mexico, January Term, 1886.

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error. } Ejectment.

Appeal from the first judicial district court.

Transcript of Record.

E. B. Seward, attorney for plaintiff in error.
Catron, Thornton & Clancy, H. M. Atkinson, attorneys for defendant in error.

1 TERRITORY OF NEW MEXICO, *Supreme Court,* } *ss:*

Be it remembered that heretofore, to wit, on the twenty-eighth day of November, 1885, James P. Stoneroad, by his attorney, filed in the office of the clerk of the supreme court of the Territory of New Mexico a præcipe for a writ of error, which is in the words and figures following, to wit:

In the Supreme Court, Territory of New Mexico.

JAMES P. STONEROAD
vs.
GEORGE W. STONEROAD. } Error to San Miguel.

The clerk of the supreme court will please issue a writ of error to the district court of San Miguel county to bring into said supreme court for review the record and judgment in a cause in ejectment lately pending in said district court, wherein George W. Stoneroad was plaintiff and James P. Stoneroad was defendant, and judgment was rendered in favor of said George W. Stoneroad and against said James P. Stoneroad for the possession of the tract of land sued for and for damages and costs.

E. B. SEWARD,
Att'y for Pl'ff in Error.

Nov. 28, 1885.

And afterwards, to wit, on said November 28, 1885, there was issued out of said clerk's office a writ of error directed to the district court of the first judicial district of said Territory in and for said county of San Miguel, which is in the words and figures following, to wit:

THE TERRITORY OF NEW MEXICO:

To the district court of the first judicial district of the Territory of New Mexico, sitting within and for the county of San Miguel, Greeting:

Because in the record and proceedings and in the rendition of judgment in a certain cause lately pending before you, wherein George W. Stoneroad was plaintiff and James P. Stoneroad was defendant, error has intervened, as it is said, to the damage of the said defendant, and we, being willing that such error, if any there be, should be corrected and speedy justice done in that behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid to the supreme court of the Territory of New Mexico, together with this writ, so that you have the same in said supreme court on the first day of the next term thereof, to be begun and held on the first Monday of January, A. D. 1886, at Santa Fé, in said Territory, in pursuance of law.

Witness the Honorable William A. Vincent, chief justice of the supreme court of the Territory of New Mexico, and the seal of said court this 28th day of November, 1885.

[SEAL.] C. M. PHILLIPS, *Clerk.*

And afterwards, to wit, on the same day and year aforesaid, November 28th, 1885, there was issued out of said clerk's office a citation to said defendant, which is in the words and figures following, to wit:

2 The Territory of New Mexico to the sheriff of the county of Santa Fé, Greeting:

You are hereby commanded that you give notice to George W. Stoneroad that James P. Stoneroad has sued out from the supreme court of the Territory of New Mexico a writ of error upon a certain judgment of the district court within and for the county of San Miguel, rendered at the August term, 1885, thereof, in a certain cause wherein George W. Stoneroad was plaintiff and James P. Stoneroad was defendant, and also that you make known to him that he be and appear before our said supreme court on the first day of the next term thereof, to be begun and held in the city of Santa Fé on the first Monday of January, 1886, to show cause, if any there be, why the said judgment should not be reversed, annulled, and altogether held for nothing and why speedy justice should not thereupon be done between the parties in that behalf.

Witness the Honorable William A. Vincent, chief justice of the supreme court of the Territory of New Mexico, and the seal of said court this 28th day of November, 1885.

[SEAL.] C. M. PHILLIPS, *Clerk.*

And afterwards, to wit, on the said 28th day of November, 1885, said citation was returned into said clerk's office, with the following admission of service endorsed thereon, to wit:

We admit service of the within citation this 28th day of November, 1885.

CATRON, THORNTON & CLANCY,
H. M. ATKINSON,
Att'ys for George W. Stoneroad, Def't in Error.

And afterwards, to wit, on the 24th day of December, 1885, said writ of error was returned into said clerk's office, with a return thereto endorsed thereon, which said return is in the words and figures following, to wit:

I hereby make return to the within writ by annexing thereto an authenticated copy of the record and proceedings in the cause therein named under my hand and seal of said district court and by transmitting the same to the clerk of said supreme court.

R. W. WEBB,
Clerk of said District Court.

[Seal of First Jud. Dist. Court, N. M.]

To which said writ of error was annexed, when so returned as aforesaid, the following transcript of record, to wit:

3 TERRITORY OF NEW MEXICO, }
First Judicial District, County of San Miguel. }

Be it remembered that heretofore, to wit, on the eighteenth day of July, 1885, George W. Stoneroad, by his attorney, filed in the clerk's office of the district court of San Miguel county, Territory of New Mexico, his declaration in ejectment against James P. Stoneroad; which said declaration is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

In the District Court of the First Judicial District of the Territory of New Mexico, Sitting in and for the County of San Miguel, for the Trial of Causes Arising under the Laws of said Territory, at the August Term, A. D. 1885.

To the Honorable William A. Vincent, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof:

Your petitioner, George W. Stoneroad, a resident of the county of San Miguel, in the Territory of New Mexico, complains of James P. Stoneroad, a resident of the said county of San Miguel, in said Territory of New Mexico, in an action of ejectment, for that whereas heretofore, to wit, on the eighth (8th) day of August, in the year of our Lord one thousand eight hundred and eighty-two, at, to wit, the said county of San Miguel, in said Territory of New Mexico, the said plaintiff was entitled to the possession of certain lands and

premises situate within the said county of San Miguel, Territory of New Mexico, to wit, all and singular that certain tract or grant of land commonly known and called the Preston Beck grant,
4 situate in the said county of San Miguel and Territory of New Mexico, which was on the twenty-third day of December, A. D. 1823, by the then governor or superior political chief, with the consent of the provincial deputation of the Territory of New Mexico, granted to Juan Estevan Pino, and afterwards, to wit, in the year 1856, approved in the name of Preston Beck, Jr., by the United States surveyor general for the Territory of New Mexico after an investigation thereof under and by virtue of the requirements of the eighth section of the act of Congress of the United States approved July twenty-second, A. D. 1854, and which said grant was afterwards, to wit, on the twenty-first day of June, A. D. 1860, by the Congress of the United States of America, confirmed to said Preston Beck, Jr., as private land claim number one, in the Territory of New Mexico; which said grant or tract of land and premises are more particularly described and bounded as follows, to wit: On the north by the landmarks of the farm or land of Don Antonio Ortiz and the table-land of the Aguage de la Yegua, on the south by the Pecos river, on the east by the table-land of Pajarito, and on the west by the point of the table-land of the Chupaines.

Yet the said defendant, James P. Stoneroad, thereafter, at, to wit, on the eighth day of August, in the year of our Lord one thousand eight hundred and eighty-two, at, to wit, the said county of San Miguel, Territory of New Mexico, entered into the said lands and premises and unlawfully withheld from the plaintiff the possession thereof and ever since has unlawfully withheld and still does unlawfully with-old the said possession of the said lands and premises from the said plaintiff, to his damage in the sum of six thousand dollars, wherefore the said plaintiff brings suit and prays judgment of this honorable court against the said defendant for the recovery
5 of the possession of the said lands and premises and for his damages in the sum of six thousand dollars, together with the costs of this suit.

HENRY M. ATKINSON,
THOS. B. CATRON,
Attorneys for Plaintiff.

And afterwards, to wit, on the fourteenth day of August, 1885, said defendant, by his attorney, filed in said clerk's office his plea to said declaration, which is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO:

First Judicial District Court, San Miguel County, August Term, A. D. 1885.

GEORGE W. STONEROAD
vs.
JAMES P. STONEROAD. } Ejectment.

Now comes the defendant in the above-entitled cause and defends the wrong and injury when, &c., and says that he is not guilty of the said supposed trespass and ejectments or either of them above laid to his charge by said plaintiff in manner and form as the said plaintiff has above complained against him; and of this he puts himself upon the country, &c.

E. B. SEWARD,
Attorney for Defendant.

And the said plaintiff doth the like.

H. M. ATKINSON,
T. B. CATRON,
Attorneys for Plaintiff.

And afterwards, to wit, at a regular term of the district court of the first judicial district of the Territory of New Mexico, begun and held within and for the county of San Miguel, at the court-house of said county, in the city of Las Vegas, on the first Monday of August, in the year one thousand eight hundred and eighty-
6 five, and on the twentieth day of said term, the same being Wednesday, August 26th, 1885, the following, among other, proceedings were had, to wit:

2297.

GEORGE W. STONEROAD
vs.
JAMES P. STONEROAD. } Ejectment.

Now comes said plaintiff, by his attorney-, H. M. Atkinson and T. B. Catron, Esquires, and said defendant comes by his attorney, E. A. Fiske, Esquire, and, issue having been heretofore joined between said parties, thereupon comes a jury, to wit: Ike Block, M. Gonzales y Duran, O. L. Gregory, Anastacio Jaramillo, Jose G. Rivera, Aniceto Baca, Feliciano Escudero, Doroteo Sandoval, M. Gonzales y Fresques, Ignacio Gallegos, Candido Robeldo, and Serafin Montano, twelve good and lawful men of the body of the county, who, being duly sworn the truth to speak upon the issues joined between said parties, after hearing the evidence and the instructions of the court, upon their oaths do say that they find the defendant guilty; and thereupon said defendant gives notice of a motion for a new trial and in arrest of judgment.

And afterwards, to wit, on the 27th day of August, 1885, said defendant filed in said clerk's office his motion for a new trial, which is in the words and figures following, to wit:

District Court, San Miguel County, New Mexico, August Term, 1885.

GEORGE W. STONEROAD
vs.
JAMES P. STONEROAD. } Ejectment.

Now comes the said defendant in the above-entitled cause and moves the court here to set aside the verdict of the jury in said cause and for a new trial because--

7 First. The said verdict was contrary to the law and the evidence of said case.

Second. The court erred in refusing the motion of the defendant to instruct the jury in said cause to find a verdict for said defendant.

Third. The court erred in refusing to instruct the jury as prayed for in the first and only instruction asked for by said defendant.

E. B. SEWARD,
Attorney for Defendant.

And afterwards, to wit, on the twenty-first day of August, 1885, the term aforesaid, the same being August 27th, 1885, the following, among other, proceedings were had, to wit:

GEORGE W. STONEROAD
vs.
JAMES P. STONEROAD. } Ejectment.

Now comes said defendant, by his attorney, and moves the court to set aside the verdict of the jury heretofore entered herein and grant him a new trial herein for reasons set forth in his motion on file; and said motion being submitted to the court without argument, the court denies the same. It is therefore ordered by the court that the said motion be, and the same hereby is, denied. It is thereupon, in accordance with the said verdict, considered by the court that the said plaintiff, George W. Stoneroad, recover of the said defendant, James P. Stoneroad, the possession of the following-described lands and premises situate within the county of San Miguel, Territory of New Mexico, to wit: All and singular that certain tract or grant of land commonly known and called the Preston Beck grant, situate in the said county of San Miguel and Territory of New Mexico and more particularly described and bounded as follows: On the north by the land-marks of

8 the farm or land of Don Antonio Ortiz and the table-land of the Aguage de la Yegua, on the south by the Pecos river, and on the east by the table-land of Pajarito and on the west by the point of the table-land Chupaines, and that he have a writ of possession therefor, and that he also recover of said defendant his costs in this behalf expended, to be taxed, and that he have execution therefor.

And afterwards, to wit, on the nineteenth day of December, 1885, said defendant filed in said clerk's office the following bill of exceptions, to wit:

Be it remembered that upon the trial of the cause of George W. Stoneroad *vs.* James P. Stoneroad, being an action of ejectment, on the — day of August, 1885, at the August term, 1885, of the district court within and for the county of San Miguel, in the Territory of New Mexico, plaintiff introduced the following evidence to sustain his cause:

Petition to Surveyor General.

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

To the surveyor general of New Mexico:

Preston Beck, Junior, a citizen of the United States and resident of the Territory of New Mexico, respectfully represents to you that he is the claimant and legal owner in fee of a certain tract of land lying and being situate in the county of San Miguel, in said Territory of New Mexico, and known as the "Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas," and bounded on the north by the landmarks of the sitio of Don Antonio Oritz and the mesa of the aguage de la Yegua, on the south by the River Pecos, on the east by the mesa of Pajarito, on the west by the point of the mesa of the Chupaines; all of which points and boundaries are well-known landmarks in the said county of San Miguel;

9 and the said Preston Beck, the "present claimant," claims a perfect title to said land by virtue of a grant made on the twenty-third day of December, in the year one thousand eight hundred and twenty-three, by Bartolomé Baca, governor and superior political chief of the province of New Mexico, by and with the advice and approvation of the provincial deputation of the said province of New Mexico, to Juan Estevan Pino, a citizen of Mexico, which said grant was made as aforesaid by authority of the laws, usages, and customs of the Republic of Mexico in force at the time and of the laws and regulations of Spain which were declared and recognized to be in force and effect at that time in the Republic of Mexico.

For which power and authority see "Collection of the decrees and orders of the Cortes of Spain which are considered in force in Mexico, published in Mexico by Mariano Galvan in 1829," page 56 and from pages 91 to 101; see also the decrees of Mexico of June 4 and September 18, 1823; pages 123 and 180 of 2 volume Gelvan's decrees su Ordenanzas de Tierras y Aguas, and 8 Peters' Reports, 436; 15 Peters, 130; 1 Howard, 24; 6 Peters, 691; Holcomb's U. S. Digest, 358 to 363.

The said Preston Beck claims and further states that he cannot show the quantity of land claimed by him except as set forth in said grant, as within the above-described well-known metes and boundaries, nor can he furnish a plat of survey, as no survey has ever been executed.

Claimant further states that one Alexander Hatch and about one hundred other persons have settled upon said grant without a title

from any person or from any government and with a full knowledge of the existence of the claim now presented.

Claimant further states that by virtue or said grant Juan
10 Estevan Pino was lawfully put in possession of said tract of land by the competent authorities and settled upon said claim with a large amount of property and there held possession of the same for the space of twenty-one years and until expelled by the hostilities of the savage Indian tribes; that upon the death of Juan Estevan Pino the said tract of land was inherited by his two sons, Justo Pino and Manuel D. Pino, who were his only heirs, and the present claimant claims his title by virtue of deeds from Justo Pino and Gertrudes Roscom, his wife, and from Manuel D. Pino and Josefa Ortiz, his wife, all of — original grants and deeds of transfer and documentary titles, marked A, B, C. D, E, are herewith filed and made part of this claim.

Claimant files this his said claim before you under the 8th section of the act of Congress approved 22 July, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," and respectfully asks confirmation by you of his said claim.

PRESTON BECK, JR.,
By H. M. SMITH, *His Attorney.*

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO.

I hereby certify that the foregoing is a true and literal exemplification of the original on file in this office.

Witness my hand and official seal this 6th day of July, A. D. 1885.

[SEAL.] CLARENCE PULLEN,
Surveyor General.

Territory of New Mexico to all to whom these presents shall come sends greeting:

Know ye that the attestation or certificate hereunto at-
11 tached is in due form and made by the proper officer, and that Clarence Pullen, whose name is subscribed thereto, was at the time of subscribing the same the United States surveyor general for the Territory of New Mexico, duly appointed, commissioned, and qualified; full faith and credit are due and ought to be given to his official acts accordingly.

NEW MEXICO, *ss:*

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the Territory of New Mexico, at Santa Fé, this 11th day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of the Territory the thirty-ninth.

[SEAL.] SAM'L A. LOSCH,
Secretary of the Territory.

Translation.

Grant of the farm (sitio) of the Ojito de Las Gallinas, given in favor of Don Juan Estevan Pino, with the title "Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas."

Year 1823.

Sir, acting superior political chief of this province:

The citizen Juan Estevan Pino, inhabitant and resident of this city of Santa Fé, capital of the same province of New Mexico, before your honor with due respect represents: that finding himself the owner of a considerable amount of stock (bienes de campo), and having no proper and capable place in which to take care of it, with any security and method for its progressive advancement, and being indispensible for me to solicit the means that assist industry to which I aspire to sustain, with decency and respect which I have always accustomed a numerous family with which I am surrounded, in virtue of which I pray your honor, if you should so consider just, to grant to me in the name of the supreme government of the Mex an nation, and with the title of grant the place of the
12 Little Spring (spring which is called of Las Gallinas), which is on the road which goes to the town of Las Conchas, in the direction of east and south, asking for its boundaries the following points: On the north the landmarks of the farm of Don Antonio Ortiz and the table-land of the "aguage de la Yegua;" on the south the River Pecos; on the east the table-land of Pajarito, and on the west the point of the table-land of Las Chupaines, where I offer, provided your honor is pleased to grant said place in my favor, which will be styled "Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas," to possess with my aforesaid stock (bienes de campo), and open cultivation (labor) on the lands of said farm as the localities will allow; your honor being pleased to elevate this my request to the most excellent provincial deputation of this Territory, in order that in view of it, and with you may deem proper, wherefore I request and pray your honor to do as I solicit, by which I will receive the grace, I impetrate costs, protests and whatever is necessary.

(Signed) JUAN ESTEVAN PINO. [RUBRIC.]

Santa Fé, the 6th of December, 1823, 3d and 2d.

Bartolomé, acting political chief of the province of New Mexico and president of the most excellent provincial deputation of its territory, &c.

The present foregoing petition (solicited on common paper, there being none of my seal in this province) being considered as presented and accepted, let it pass to the most excellent provincial deputation in order that said honorable corporation be pleased to resolve what they may deem proper at the request of the party in-

from any person or from any government and with a full knowledge of the existence of the claim now presented.

Claimant further states that by virtue or said grant Juan
10 Estevan Pino was lawfully put in possession of said tract of land by the competent authorities and settled upon said claim with a large amount of property and there held possession of the same for the space of twenty-one years and until expelled by the hostilities of the savage Indian tribes; that upon the death of Juan Estevan Pino the said tract of land was inherited by his two sons, Justo Pino and Manuel D. Pino, who were his only heirs, and the present claimant claims his title by virtue of deeds from Justo Pino and Gertrudes Roscom, his wife, and from Manuel D. Pino and Josefa Ortiz, his wife, all of — original grants and deeds of transfer and documentary titles, marked A, B, C. D, E, are herewith filed and made part of this claim.

Claimant files this his said claim before you under the 8th section of the act of Congress approved 22 July, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," and respectfully asks confirmation by you of his said claim.

PRESTON BECK, JR.,
By H. M. SMITH, *His Attorney.*

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO.

I hereby certify that the foregoing is a true and literal exemplification of the original on file in this office.

Witness my hand and official seal this 6th day of July, A. D. 1885.

[SEAL.] CLARENCE PULLEN,
Surveyor General.

Territory of New Mexico to all to whom these presents shall come sends greeting:

Know ye that the attestation or certificate hereunto at-
11 tached is in due form and made by the proper officer, and that Clarence Pullen, whose name is subscribed thereto, was at the time of subscribing the same the United States surveyor general for the Territory of New Mexico, duly appointed, commissioned, and qualified; full faith and credit are due and ought to be given to his official acts accordingly.

NEW MEXICO, *ss:*

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the Territory of New Mexico, at Santa Fé, this 11th day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of the Territory the thirty-ninth.

[SEAL.] SAM'L A. LOSCH,
Secretary of the Territory.

Translation.

Grant of the farm (sitio) of the Ojito de Las Gallinas, given in favor of Don Juan Estevan Pino, with the title "Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas."
Year 1823.

Sir, acting superior political chief of this province:

The citizen Juan Estevan Pino, inhabitant and resident of this city of Santa Fé, capital of the same province of New Mexico, before your honor with due respect represents: that finding himself the owner of a considerable amount of stock (bienes de campo), and having no proper and capable place in which to take care of it, with any security and method for its progressive advancement, and being indispensible for me to solicit the means that assist industry to which I aspire to sustain, with decency and respect which I have always accustomed a numerous family with which I am surrounded, in virtue of which I pray your honor, if you should so consider just, to grant to me in the name of the supreme government of the Mexican nation, and with the title of grant the place of the
12 Little Spring (spring which is called of Las Gallinas), which is on the road which goes to the town of Las Conchas, in the direction of east and south, asking for its boundaries the following points: On the north the landmarks of the farm of Don Antonio Ortiz and the table-land of the "aguage de la Yegua;" on the south the River Pecos; on the east the table-land of Pajarito, and on the west the point of the table-land of Las Chupaines, where I offer, provided your honor is pleased to grant said place in my favor, which will be styled "Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas," to possess with my aforesaid stock (bienes de campo), and open cultivation (labor) on the lands of said farm as the localities will allow; your honor being pleased to elevate this my request to the most excellent provincial deputation of this Territory, in order that in view of it, and with you may deem proper, wherefore I request and pray your honor to do as I solicit, by which I will receive the grace, I impetrate costs, protests and whatever is necessary.

(Signed) JUAN ESTEVAN PINO. [RUBRIC.]

Santa Fé, the 6th of December, 1823, 3d and 2d.

Bartolomé, acting political chief of the province of New Mexico and president of the most excellent provincial deputation of its territory, &c.

The present foregoing petition (solicited on common paper, there being none of my seal in this province) being considered as presented and accepted, let it pass to the most excellent provincial deputation in order that said honorable corporation be pleased to resolve what they may deem proper at the request of the party in-

terested, praying its excellency that the one signing this decree make the following remarks:

First. Its excellency does not ignore that the reduction of the public lands to private property is one of the steps that the
13 good of the country and the encouragement of agriculture and industr*iously* imperiously demand and that is an assistance to the industrious citizens who are not property-holders.

Second. It cannot be hidden from Y. E. that in this province the decline in its agriculture and industry, particularly in the raising of black cattle and sheep, has been principally on account of the inseterate abuse of all the lands being public, on which account none is improved, and thus can be seen at one single glance that when this prejudice ceases horned cattle, sheep, and horses will increase; the province will then depend on some means of recourse, which will at the same time stimulate the remaining citizens who are not indolent.

Third. That the number of vagrants in this province being so great, and there being no public establishment of correction in any portion of it, the result is that there being no place where the aggressors can be sent, for this reason crimes remain unpunished and the authorities insulted.

Fourth. That the public lands, much more such as this party solicits, which are at a great distance from the settlements, being reduced to private property, the benefit would accrue to the public fund, a resource to the authorities, and, what is more, the extension of the population at the expense of one single individual.

For the reasons given and no injury resulting to any third part, may if it seems proper according to the remarks which I have made, bestow the grant which the party interested solicits, as in so doing Y. E. will prove that they endeavor to remove the obstacles that are so diametrically opposed to the principal branches of the agriculture and industry of this province, which remain in a
14 lethargic state for the only reason of the prejudices of its own habitants, observing that the petitioner has sufficient to occupy the land he solicits.

(Signed) BARTHOLOME BACA. [RUBRIC.]

SANTA FÉ OF THE NEW MEXICO, *December 18th*, 1823.

I, the undersigned, secretary of the most excellent provincial deputation of this territory of the province of New Mexico, certify that in the journal of the proceedings of the said corporation, at page 75, number 70, on the other side of said leaf, is to be found recorded the following paragraph:

The president presented a petition from Don Juan Estevan Pino, containing a request that a piece of land of sufficient capacity for raising black cattle, sheep, and horses be marked out, granted, and registered (documente) to him, cultivating on the aforesaid land as the water and locality will allow, requesting to be allowed as boundaries of the aforesaid farm, which shall be styled the "Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas," the following points: On the north, the landmarks of the farm of Don Antonio

Ortiz and the table-land of the aguage de la Yegua; on the south, the Pecos river; on the east, the table-land of Pajarita, and on the west, the point of the table-land of Chupaines. Being open for discussion and several remarks being made by Don Antonio Ortiz and Don Pedro Garcia, it was resolved that without any further delay the land solicited by the aforesaid Don Juan Estevan Pino be granted to him, as a decline in the agriculture and industry of this province is occasioned in whole or in part by the prejudice existing against making grants on the public lands, and in order that said grant may not be wanting in any requisite this deputation resolved that through its secretary the proofs of his proprietorship to said land be given to him, on which land Mr. Pino shall fix formal boundaries that will make known his own property, granting the same to him in the name of the supreme government of the Mexican nation and as to a citizen who is in full exercise of his right, not being prevented, from the want of any requisite which in his petition is not set forth, from being recognized as a legitimate owner of the land granted to him, observing that Y. E. has considered said petition with the greatest deference.

The above is a true and legal copy of the original existing in this secretary's office, which is under my charge.

Santa Fé, December 23rd, one thousand eight hundred and twenty-three, third of the independence and second of liberty.

(Signed) JUAN BAUTISTA VIGIL,
Secretary. [RUBIC.]

City of Santa Fé, capital of the province of New Mexico, on the twenty-third day of the month of December, one thousand eight hundred and twenty-three, third of the independence and second of liberty, I, Don Bartolomé Baca, acting superior political chief of this province, by virtues of the powers upon me conferred, and with which my predecessors have been vested with the previous consent of the most excellent provincial deputation of this Territory, I have granted, and by this patent do grant, in the name of the supreme government of the nation to Don Juan Estevan Pino the land he solicits on the Gallinas river, which shall be called the Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas, recognizing the boundaries: On the north the landmarks of the farm of Don Antonio Ortiz and the table-land of the aguage de la Yegua, on the south the Pecos river, on the east the table-land of Pajarito, and on the west the point of the table land of the Chupaines, on which fixed points you will place formal and well-constructed boundaries, so that in all time to come the dividing line of the land granted to him may be known; that, according to the laws referring to the matter which are now in force or which may be hereafter in force, he may enjoy the same himself, and his lawful heirs, with the other provisions of the general laws, and being placed in possession in the manner accustomed said proprietor may place such improvements on said land as he may deem proper, building houses, enclosures, and whatever may be necessary for the promotion of the enterprise he is about to establish, and by

this proceedure I have so decreed, ordered, and signed with my attending witnesses, in the absence of my secretary and of a national notary, of which class there are none within the limits of this province, under my charge and on this common paper, there being none of the stamped.

Given in the aforesaid city on the aforesaid day, month, and year, to all which I certify.

BARTOLOMÉ BACA.

Attending: RAFAEL SARRACINO.
Attending: SANTIAGO ABREU.

In the aforesaid town of Santa Fé, on the twenty-fourth day of the month of December, one thousand eight hundred and twenty-three, 3d and 2d, I, the aforesaid political chief, said that by virtue of having bestowed on Don Juan Estevan Pino the grant of the farm of the Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas, as appears by this patent, I ought to direct and did direct that, these proceedings being recorded, a copy be furnished to the party interested that it may be a proof in his favor at all time, and by this act I have so decreed, ordered, and signed, with my attending witnesses, to which I certify.

BARTOLOMÉ BACA.

Attending:
JOSE RAFAEL SARRACINO.
SANTIAGO ABREU.

17 A copy of the original which is deposited in these archives under my charge.

(Signed) BARTOLOMÉ BACA. [RUBIC.]

Santa Fé, December 27th, 1823.

In the new Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas, on the twenty-ninth day of the month of August, on the present year, 1824, I, Don Tomas Sena, constitutional justice (alcalde) of the corporation of the jurisdiction of San Miguel del Bado de Pecos, by virtue of the order communicated to me in a dispatch of Don Bartolomé Baca, acting superior political chief of this Territory of New Mexico, of the twentieth instant, which, in its original precedes this proceeding and previous the grant of land bestowed by the most excellent provincial donation, Don Juan Estevan Pino, resident of the city of Santa Fé, whom I certify to be known to me, I certify and swear that the aforesaid document with accredit *ipso facto* that the aforesaid Don Juan Estevan Pino is the legitimate of the aforesaid farm of San Juan Bautista del Ojito del Rio de Las Gallinas, were presented to me.

In witness whereof and in compliance with the provisions of the foregoing superior order I have placed him in possession of said hacienda, pointing out grant known as in all the jurisdiction of my charge, the boundaries set forth in his petition, and in the grant which

was bestowed to him declaring that from this date the time for him to corroborate his claim, which the axiom proved in the laws of possession, &c., favors him with will commence.

Given in the new farm of San Juan Bautista del Ojito del Rio de Las Gallinas, on the said day, month, and year, to which I certify, signing the present document with my attending witnesses, in 18 the absence of a national notary, there being none in all this Territory, to which I certify.

(Signed) TOMAS SENA,
President Justice. [RUBIC.]

Attending: JOSE MIGUEL PEÑA. [RUBIC.]

Before me—

(Signed) JOSE MIGUEL SANCHEZ,
Clerk of Corporation. [RUBIC.]

PECOS, *July 15th*, 1848.

We transfer all the right and interest we possess in the foregoing document in favor of our wives, Doña Josefa Ortiz and Doña Gertrudis Roscom, with all the formalities which the law requires, granting and donating to them the lands contained in said document unconditionally, perfectly, and irrevocably, with all the requirements which may be necessary, should it or might it be worth more, and in proof whereof we sign with two witnesses this day of the date.

(Signed) MANUEL DORETO PINO. [RUBIC.]
(Signed) JUSTO PASTOR PINO. [RUBIC.]

Witness:
(Signed) MANUEL VARELA. [RUBIC.]

Witness:
(Signed) BLAS ORTEGA. [RUBIC.]

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR DEPARTMENT,
SANTA FÉ, N. M., *May 19th*, 1885.

I do hereby certify *that* the foregoing to be a translation of the documents marked A and B, in claim No. two to the Ojito de Las Gallinas; that the two above-mentioned documents are in part originals and in part copies of the proceedings had in reference to the grant of the aforesaid premises, and that they are embodied in the said foregoing translation.

(Signed) DAVID V. WHITING, *Translator.*

19 *Preston Beck, Junior, Claim.*

Decision of the surveyor general of New Mexico, 1856.

PRESTON BECK, JR., Assignee of the Heirs of Juan Estevan Pino,
vs.
ALEXANDER HATCH and Others.

This case was filed in this office by Preston Beck, Junior, as present claimant, under a conveyance from the heirs of Juan Estevan Pino and their wives, on the 10th day of May, 1885.

On the sixth day of December, 1823, Juan Estevan Pino, a citizen of this Territory, petitioned Bartolomé Baca, acting superior chief of the province of New Mexico, for a — of land in the county of San Miguel, to be known as the Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas, with the following boundaries: On the north the landmarks of the tract of Don Antonio Ortiz and the table-land of the agua de la Yegua, on the south the Pecos river, on the east the table-land of Pajarito, on the west the point of the table-land of Chupaines.

The petition was transmitted by Bartolomé Baca, acting superior political chief of the most excellent provincial deputation of New Mexico, on the 18th day of December, 1823, recommending the grant to be made to the petitioner, and in compliance with the recommendation of the political chief the provincial deputation of New Mexico did, on the twenty-third day of December, grant to Juan Estevan Pino, for himself and his legitimate heirs, the land asked for in the petition, with the boundaries therein set forth.

On the same day Bartolomé Baca, acting superior political chief, issued his granting decree in pursuance of the action taken
20 by the provincial deputation in the premises, requiring the party to place permanent and fixed landmarks to his possession in order that in all time to come the dividing line of his possession might be known.

On the 29th day of the month of August, 1825, the party was placed in possession of the land granted to him by Don Tomas Sena, constitutional justice (alcalde) of the corporation of the jurisdiction of San Miguel del Bado, with all the formalities required by law.

On the fifteenth day of July, A. D. 1848, Manuel Doroteo Pino and Justo Pastor Pino, the legitimate of Juan Estevan Pino, transferred all their right, title, and interest in and to the above grant of land to their wives, Doña Josefa Ortiz and Doña Gertrudis Roscom. On the 18th day of June, 1853, Manuel Doroteo Pino and Josefa Ortiz, his wife, conveyed to Hugh N. Smith, trustee for Preston Beck, Jr., the one undivided half of said tract of land known as the Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas, and on the 30th day of October, 1854, Justo Pastor Pino and Gertrudis Roscom, his wife, conveyed to Preston Beck, Jr., the remaining undivided half of said tract of land.

Present claimant alleges in his petition that one Alexander Hatch and about one hundred other persons have settled upon said grant without a title from any person or from any government and with a full knowledge of the existence of the grant filed by the claimant.

The above case was set for hearing on the 20th day of August, 1855, and, the testimony presented by the claimant being taken, the counsel for claimant rested his case. On the 13th day of July, 1856, the counsel for the settlers closed their testimony and rested their case. The case was argued by Mr. Hugh H. Smith and Mr. R. M. Tompkins for the claimant, and Mr. M. A. Shurst for Alexander Hatch and others.

21 The following are the principal objections made by the counsel for Hatch *et al.* against the confirmation of the grant:

First. The want of authority vested in the political chief of the Territory, Bartolomé Baca, to make a grant of land, the Republic of Mexico having just severed itself from the sovereignty of the Spanish government and no permanent government being established and all the laws of the Spanish government previously enforced being annulled by the act of independence.

Second. The indefiniteness of the grant, there being no landmarks established as required by law.

Third. That Juan Estevan Pino, the grantee, had forfeited all right to the land granted to him on account of its non-occupancy for the time required by law.

This case was argued very elaborately by the counsel on both sides, and many points concerning boundaries of the grant were introduced in the testimony, and the arguments, which this office deems unnecessary at present to notice, as they have no direct reference to the validity of the grant.

This case has been considered by this office with much attention, and, as it is understood that the validity of nearly all the private land claims in this Territory depend upon the same principles, all the authorities that could be procured having any bearing on the case have been carefully examined and maturely deliberated. The documents presented in this case are original, and the signatures of the granting officers and conveyors are proven by testimony to be genuine, and the chain of title from the original grantee to the present claimant is complete.

The government of Spain vested in the supreme officers of the ultramarine provinces under its sovereignity the right of

22 separating from the public domain such portions of land as they deemed proper for the promotion of agriculture and the encouragement of stock raising, as will be seen by a reference to the orders and decrees of the Spanish government and recopitation of the Indies. White's Recopitation. When Mexico was severed from the sovereignty and became a separate and independent government in the year 1821 it was expressly declared that all the authority necessary for the administration, justice, and for other public acts should emenate from the empire (Mexican) itself. It has seemed to confirm and continue in office all the authorities for the present, and, according to the plan of Iguala and the treaties of the

city of Cordova, in order to legalize the exercise of those respective powers. Galvan Decrees, vol. 1.

The fifteenth article of the plan of Iguala declares that all political, civil, and military and ecclesiastical officers shall continue as they are at the present day; those only shall be revoked who do not subscribe to the plan of, &c. Galvan's Decrees, vol. 1, page 4.

The twelfth section of treaty of Cordova also declares that "the provisional assembly shall be governed by the laws then in force, where they are not contrary to the plan of Iguala." Galvan's Decrees, vol. 1, page 7.

There was, therefore, interregnum in the government and the plan of Iguala, and the treaty of Cordova vested in the officers of the new government the same power and authority exercised by them under the sovereignty of Spain.

In the absence of the governor from the Territory it was customary for the eldest member of the provincial deputation to assume his duties under the title of "Gefe Politico," as in the present case, and full power and authority vested in him to do and perform all the duties appertaining to the office of the governor. In the
23 present case, however, the grant was made by the provincial deputation, the supreme authority of the Territory, and the granting decree of the political chief was but a fulfilment of the enactment of that body, of whose authority to dispose of the public domain there is no question.

The boundaries set forth in the granting decree and natural points, well known to all the community, and in the absence of *and* survey, which was not required in the grant, are amply sufficient to designate such portions of land as was intended to be severed from the public domain. The evidence presented by the claimant shows that the grantee did have possession of the land granted to him; that he occupied it with his stock and cultivated certain portions of it, and he continued to do so until he was driven off by the hostile Indians. Not having voluntarily abandoned the land, he did, therefore, voluntarily forfeit his right to the grant.

The intention of the provincial deputation and the recommendation of the governor and no conditions being attached to it makes the grant as positive and absolute one and vests in the grantee a title in fee to all the land embraced within the boundaries set forth in the granting decree.

The objections made by counsel against the validity of the grant are therefore overruled.

Believing this to be one of the cases coming under the provisions of the treaty of Guadalupe Hidalgo of 1848, and having strong claims to validity under the decisions of the Supreme Court of the United States in similar cases, the grant made to Juan Estevan Pino to a certain tract of land in the county of San Miguel and known as "the Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas," and of which Preston Beck, Junior, is the present claimant, is hereby approved, and the Congress of the United States is respectfully recommended to cause a patent to be issued to

24 the said Preston Beck, Jr., by the proper department and cause the same to be surveyed.

WM. PELHAM,
Surveyor General of New Mexico.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, *July 6th*, 1885.

I hereby certify that foregoing is a true and literal exemplification of the original translation and decision of the surveyor general on file in this office, with the papers in the Preston Beck, Junior, grant, reported number one.

Witness my hand and official seal on the day and year above written.

[SEAL.] CLARENCE PULLEN,
Surveyor General.

Territory of New Mexico to all to whom these presents shall come sends greeting:

Know ye that the attestation or certificate hereunto attached is in due form and made by the proper officer, and that Clarence Pullen, whose name is subscribed hereto, was at the time of subscribing the same the United States surveyor general for the Territory of New Mexico, duly appointed, commissioned, and qualified. Full faith and credit are due and ought to be given to his official acts accordingly.

NEW MEXICO, *ss:*

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the Territory of New Mexico, at Santa Fé, this 11th day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of the Territory the thirty-ninth.

[SEAL.] SAM'L A. LOSCH,
Secretary of the Territory.

25 *Stipulation of Parties.*

In the District Court of the First Judicial District within and for the County of San Miguel, in the Territory of New Mexico.

GEORGE W. STONEROAD, Plaintiff,
vs.
JAMES P. STONEROAD, Defendant. } No. 2297. Ejectment.

It is hereby stipulated by and between the parties to the above-entitled cause—

First. That Exhibit "A" filed in said cause is a true copy of the original expediente of the Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas grant, in the Territory of New Mexico, and of the official transactions of all thereof and of all proceedings had and papers and documents filed before and with the United

States surveyor general of the Territory of New Mexico for the investigation and confirmation of said grant under the provisions of the eighth section of the act of Congress of the United States approved July 22, 1854, and of the testimony taken by and opinion and decision of said surveyor general thereon as the said espediente translation, proceedings, opinion, and papers were by said surveyor general submitted to the said Congress of the United States under said act for the action of Congress thereon.

Second. That upon the papers and record of which said Exhibit A is a true copy the Congress of the United States confirmed the title of said grant, "as recommended for confirmation by the surveyor general," as private land claim number one, section one of the act of said Congress approved June 21st, 1860, said confirmation being absolute and without any condition whatever and to the extent of the boundaries given in the original muniments of the title as the same are correctly copied in said Exhibit A.

26 Third. That after said confirmation a survey of said grant was made by the United States without notice to the owners of said grant or either of them; which said survey, marked "Preston Beck grant," and the course and location of the Pecos river, one of the boundaries of said grant, are correctly laid down and marked on Exhibit B, hereto attached.

Fourth. That George W. Stoneroad, the plaintiff in said cause, is by virtue of divers mesne conveyances from the original grantee of said grant and his legal representatives the owner of one-third part and share undivided of the said The Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas grant number one, situated in the county of San Miguel, Territory of New Mexico.

Fifth. That the defendant in said cause is now and for the four years last past has been in the possession and occupancy adverse to said plaintiff and is now in the adverse possession and occupancy of two certain tracts or parcels of land within the boundaries hereinafter described; which said two tracts or parcels of land immediately adjoin said survey of said grant on the east and south and are marked respectively 1 and 2 in red ink on said Exhibit "B," both of said tracts 1 and 2 being west of a line drawn due north and south through the most easterly point of said survey, are south of the mesa de la Yegua and the landmarks of the farm of Don Antonio Ortiz, and are north of the Pecos river, and are also east of the point of the table-land of Chupaines, the three latter being natural objects called for as boundaries of said grant in the minutes of title before referred to, a copy of which, with the translation thereof, *are* embodied in Exhibit "A," hereinbefore referred to.

Sixth. That Preston Beck, Jr., the confirmee of said grant,
27 died a short time before the twenty-first day of June, 1860, leaving his estate, a part of which was said grant or tract of land, by his will to his brother, cousin, and seven nephews and nieces, all of whom were non-residents of the Territory of New Mexico. At the time of the making and approval of the said survey of said grant by the Government three of said beneficiaries under the said will of Preston Beck, Jr., being minor children and

three others of them being married women at the time of the making of said survey and the approval thereof, and the said plaintiff, George W. Stoneroad, was not one of the legatees under said will; that none of the owners of said land have ever acquiesced in said survey at any time since the same was made and approved.

J. P. STONEROAD, *Defendant.*
GEORGE W. STONEROAD, *Plaintiff.*

Section one of the act of Congress approved June 21, 1860.

Be it enacted by the House of Representatives of the United States of America in Congress assembled, That, the private land claims in the Territory of New Mexico as recommended for confirmation by the surveyor general of that Territory and in his letter to the Commissioner of the General Land Office of the twelfth of January, eighteen hundred and fifty-eight, designated as numbers one, three, four, six, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen and eighteen and the claim of E. W. Eaton not entered on the corrected list of numbers but standing on the original docket and abstract returned of the surveyor general as number sixteen be and they are hereby confirmed, provided, that the claim number nine, in the name of John Scolley and others, shall not be confirmed for more than five square leagues, and that the claim number seventeen, in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each of said claimants.

28 GEORGE W. STONEROAD, being duly sworn, is examined by Mr. T. B. CATRON, and testifies as follows:

Q. Are you the plaintiff in this case?

A. Yes, sir.

Q. Are you acquainted with the place—do you know the land in question in this case?

A. I do.

Q. Are you acquainted with that section of the country down there?

A. Yes, sir.

Q. Are you acquainted with a mesa down there known as the mesa of Pajarito?

A. Yes, sir.

Q. State whether you are acquainted with the surveys which have been made of the Beck grant.

A. Yes, sir.

Q. State whereabouts the mesa of Pajarito is situated. I speak now of the western end of the mesa of Pajarito; whereabouts that is situated with reference to the survey which was made—that is, with reference to the eastern portion of the survey as made.

A. The mesa of Pajarito—that is, commonly known as Pajarito—lies about five miles east of the present survey.

Q. Will you take this map (handing witness a map) and point out about what point it is, if you can?

A. The mesa of Pajarito is at about that point (showing on map).
Q. Are you acquainted with the mesa aguage de la Yegua?
A. Yes, sir.
Q. And the tract of land known as the farm of Antonio Ortiz?
A. Yes, sir.
Q. Point out on that map where they are located, if you can.
29 A. This is the Antonio Ortiz farm and this is the aguage de la Yegua (showing on the map).
Q. Mr. Stoneroad, from what direction does the mesa of aguage de la Yegua lie or extend from the northeast corner of this survey as made?
A. I think it extends about east; perhaps a little north of east.
Q. About how far does it extend from that point east?
A. That mesa extends along—I have been over there twenty miles.
Q. It is a continuous unbroken mesa?
A. Yes, sir.
Q. Extends nearly east?
A. Yes, sir.
Q. Now state where the land the defendant occupies is with reference to the mesa of aguage de la Yegua—where the defendant is.
A. The land that he occupies lies about two miles and a half east of the present survey.
Q. I am asking you with reference to the aguage de la Yegua.
A. It lies due south of it.
Q. And about how far from it?
A. About fifteen miles.
Q. South?
A. Yes, sir.
Q. Now, drawing a line through the most western part of the mesa of Pajarito, due north and south, which side of that line does this land occupied by defendant lie?
A. On the west side of that line.
Q. About how far from that line would it be?
A. I presume it will be ten miles.
Q. Are you acquainted with the place called the point of the mesa of Chupaines?
30 A. Yes, sir.
Q. What direction is this land from that?
A. East of it.
Q. You are acquainted with the course of the Pecos river there, are you not?
A. Yes, sir.
Q. Which side of the Pecos river is it?
A. On the north side of the Pecos.
Q. The Pecos river runs about southeast along there—from the northwest to the southeast?
A. Yes, sir.
Q. It is, then, on the northeast side of the Pecos river?
A. Yes, sir.

Q. Mr. Stoneroad, what is the value of the lands and improvements, if you know, occupied by the defendant in this case—that is, the lands which are in question and occupied by him?

A. It is of considerable value; I should judge six or seven thousand dollars.

ROBERT J. HAMILTON, being duly sworn, is examined by Mr. CATRON, and testifies as follows:

Q. Are you a resident of the county of San Miguel?

A. Yes, sir.

Q. How long have you resided in this county?

A. I have resided in this county about twenty-five years.

Q. What is your first name?

A. Robert J.

Q. Whereabouts do you reside in this county?

A. I live in the city of Las Vegas.

Q. Are you acquainted with the land which is in question in this case, known as the Beck grant?

A. I am somewhat acquainted with the Beck grant.

Q. Did you ever reside in that section of the country?

31 A. I formerly resided in the vicinity of it.

Q. Are you acquainted with the place known as the mesa of Pajarito?

A. I have only a slight acquaintance.

Q. You know the point which is known as the mesa of Pajarito?

A. Yes, sir.

Q. Are you acquainted with what is known as the mesa of aguage de la Yegua?

A. Yes, sir.

Q. You know the point known as the mesa of Chupaines?

A. Yes, sir.

Q. Do you know the course and direction of the Pecos river, that runs through there?

A. The general direction; yes, sir.

Q. You are acquainted with the Pecos river and know its general course and direction?

A. Yes, sir.

Q. Do you know, on the east boundary where the survey was made of the Beck grant, the point that was established as the most eastern point of it?

A. I am only acquainted with that from information. I was not present when it was surveyed.

Q. Do you know where it is understood that the point is located—the southeast corner, as made? Look at this map where it is marked P. Are you acquainted with that point?

A. I hav'n't very much acquaintance with it.

Q. Do you know the point where the defendant, James Stoneroad, has his location now?

A. No, sir; I do not.

Q. Do you know any of those points there which you can

designate anything about with reference to that survey? Can you point out on that map about where the mesa of Pajarito is?

32 A. Yes, sir; I have a general knowledge of the Pajarito mesa.

Q. Now, if you can point out on that map about where it is, that is what I want to get at.

A. The Pajarito mesa does not seem to be laid down on the map.

Q. Do you know about where the Pajarito arroyo lies?

A. I should judge from what I can see from this map that the Pajarito mesa should be in this vicinity (shows on map).

Q. Do you remember on which side of the Pajarito arroyo it is on?

A. My recollection is that it is on the southeasterly side.

Q. Mr. Hamilton, what is the course and direction of the mesa of aguage de la Yegua, if you remember? You have stated that you knew the aguage de la Yegua. Just point it out on this map.

(Witness shows on map.)

Q. Now, Mr. Hamilton, I will ask you how far that mesa extends east, if it extends east at all, from the point you have designated.

A. I am not acquainted with the country east of it.

Q. Does the mesa extend east?

A. I have been in the vicinity of the aguage de la Yegua, but I am not personally acquainted with the country east of it.

Q. Is not the aguage de la Yegua a very high part, looking at it from the south?

A. Yes, sir.

Q. Do you know about where the northeast corner of the survey is as laid down on this map?

A. My understanding has always been that the northeast point of the survey was at the point of that mesa.

33 Q. You have looked at that table-land from the south?

A. Yes, sir; from a distance.

Q. You can see it from a long distance?

A. Yes, sir.

Q. In looking at it from the south, state whether or not it extends towards the east.

A. There is a mesa extends off to the east there as far as the eye can see.

Q. Extending from this point called the aguage right on?

A. Yes, sir.

Q. As far as the eye can see?

A. Yes, sir.

Q. You are acquainted with the point known as the mesa of Chupaines?

A. Yes, sir.

Q. About where is the mesa of Chupaines situated, if you can give it with reference to any particular spot? You might look at it on this map. Is it a point marked on that map?

A. According to the best of my knowledge and belief it is.

Q. Look at the course of the Pecos as marked on this map; is that about its course and direction?
A. I should think it was.

Cross-examination by Mr. FISKE:

Q. Have you any interest in this grant?
A. No, sir; I have not.
Q. Any interest in the case in any way?
A. No, sir.

BLAS MARTIN, being duly sworn, is examined by Mr. CATRON, and testifies as follows:

Q. Mr. Martin, where do you live?
A. At the junction of the Gallinas with the Rio Pecos.
34 Q. Are you acquainted with the tract of land known as the Beck grant?
A. I know some portions.
Q. How long have you been acquainted with it?
A. More than twenty years.
Q. You reside in the vicinity of this property, do you not?
A. Yes, sir.
Q. How long have you resided there?
A. I have lived there since I was born.
Q. How old are you?
A. Fifty-five.
Q. Are you acquainted with a mesa known as the mesa of Pajarito?
A. Yes, sir.
Q. Do you know where the southeastern point or corner was established of the survey made of the Beck grant?
A. Yes, sir.
Q. Now, state what direction is the mesa of Pajarito from that point.
A. Towards the east.
Q. About how far from that point?
A. About four miles, more or less.
Q. Are you acquainted with what is known as the mesa of aguage de la Yegua?
A. Yes, sir.
Q. Do you know where the northeast corner of the survey as made of the Beck grant is?
A. I have not seen it, but I have been told where it lies.
Q. You have been to that point?
A. Yes, sir.
Q. From that point state what direction the mesa of aguage de la Yegua runs from the point of that corner.
35 A. To the east.
Q. How far does it run to the east from that corner?
A. About six or seven miles.

Q. Does it not run pretty near to the Rio Colorado?

A. Yes, sir.

Q. About how far is the mesa of aguage de la Yegua from the Rio Colorado at its nearest point? How far is the eastern point of that mesa from the Rio Colorado?

A. I know the mesa, but I do not know all of it. I cannot state the distance exactly.

Q. How close, more or less, does the mesa of aguage de la Yegua run to the Rio Colorado?

A. About twenty-five miles, more or less.

Q. We are not talking about this point where you started?

A. The mesa stops at the Rio Colorado; the river cuts it.

Q. The river runs through the mesa?

A. Yes, sir.

Q. Do you know Mr. James Stoneroad, the defendant in this case?

A. Yes, sir.

Q. Do you know where his place is?

A. Yes, sir,

Q. What direction is that place from the mesa of agua de la Yegua?

A. A little west of south.

Q. How far is it from the mesa of aguage de la Yegua?

A. About thirty miles, more or less.

Q. Which is farthest west—the place where Stoneroad is or the mesa of Pajarito?

A. The house of Stoneroad.

Q. Which side of the River Pecos is the defendant's place on?

36 A. The north.

Q. What direction is James Stoneroad's place from the Chupaines mesa? Do you know the Chupaines mesa?

A. Yes, sir.

Q. What direction is James Stoneroad's place from the mesa of Chupaines?

A. I don't know James Stoneroad.

Q. Do you know where the mail station is?

A. Yes, sir.

Q. That's James Stoneroad's place. What direction is that mail station from the aguage de la Yegua?

A. South; a little east of south.

Q. Does not the mesa of aguage de la Yegua run along north of the mail station?

A. Yes, sir.

Q. How far is the mail station from the mesa?

A. About thirty miles, perhaps.

Q. Which is the farthest west, the mesa of Pajarito or the mail station?

A. The mail station.

Q. What direction is the mail station from the mesa of Chupaines?

A. To the east.

Q. What direction is the mail station from the Pecos river?
A. To the west.

Cross-examination by Mr. FISKE:

Q. Have you any interest, as an owner or otherwise, in the Beck grant?
A. No, sir.
Q. You have lived in the vicinity of the grant since you were born?
A. Yes, sir.

JAMES P. STONEROAD, being duly sworn, is examined by Mr. CATRON, and testifies as follows:

37 Q. Are you the defendant in this case?
A. Yes, sir.
Q. Did you hear the testimony of the witness who has just been on the stand?
A. Yes, sir.
Q. Do you know the place which was designated as the mail station in his testimony?
A. Yes, sir.
Q. State whether or not that is the place occupied by you.
A. It is.
Q. That is the land in question in this suit, is it not?
A. Yes, sir.

Mr. Fiske then moved the court to instruct the jury to find in favor of the defendant; the court overruled the motion and the defendant then and there excepted.

Mr. Catron then moved the court to instruct the jury to find in favor of the plaintiff; the court granted the motion and so instructed the jury; to which ruling of the court the defendant then and there excepted.

Thereupon the said defendant, James P. Stoneroad, by his counsel, filed his demurrer to the evidence in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

First Judicial District Court, August Term, A. D. 1885.

GEORGE W. STONEROAD }
vs. } Ejectment.
JAMES P. STONEROAD. }

Now comes the said defendant in the above-entitled cause and moves the court here to instruct the jury to find for the said defendant because the said plaintiff has failed to offer in evidence in

said cause any testimony to establish his right to recover in
38 this action or any testimony upon which the said jury may lawfully find for said plaintiff in said cause.

E. B. SEWARD,
Attorney for Defendant.

Which said demurrer was considered by the court and a judgment and decision of the court rendered overruling the same; to which judgment and decision defendant then and there excepted.

Thereupon the said defendant, James P. Stoneroad, moved the court in writing to instruct the jury in the words and figures following:

The jury are instructed that if they find from the evidence in this case that the grant, in evidence in this case, has been surveyed by the proper authorities of — United States, and that such survey has been approved by the proper authorities of the United States as the correct location of said grant, and that the land in dispute in this case and in the occupation and possession of said defendant is outside the limits of survey they must find for the defendant, though they may also believe that the said land so in dispute is within the boundaries of said grant, as such boundaries are set forth in the original title papers of said grant, and the recommendation of the surveyor general relative thereto is evidence in this cause. (Refused.)

Which said instruction the court refused to give to the jury, and to the decision of the court in so refusing to give said instruction the defendant then and there excepted.

Thereupon the said plaintiff, George W. Stoneroad, moved the court to instruct the jury to find a verdict of guilty against the said defendant, James P. Stoneroad, which said motion the said court allowed and gave said instruction to the jury; to the decision of
the court in allowing said motion and giving said in-
39 struction the said defendant, James P. Stoneroad, then and there objected and excepted.

Said last-mentioned instruction was the only instruction given by the court to the jury upon the trial of said cause.

Which several said matters and things not being matters of record in said cause, the said defendant, James Stoneroad, prays that this his bill of exceptions containing the same may be signed, sealed, and made a part of the record in said cause; which is done accordingly.

[SEAL.] ELISHA V. LONG,
Chief Justice of the Supreme Court of the Territory of New Mexico and Judge of the First Judicial District Court Thereof.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

I, —— ——, clerk of the district court of the county of San Miguel, Territory of New Mexico, certify that the foregoing pages and lines contain a true and perfect transcript of so much of the record as was agreed by the attorneys for the respective parties in the cause

lately pending in said court, wherein George W. Stoneroad was plaintiff and James P. Stoneroad was defendant, to be necessary for the review of said cause in the supreme court.

Witness my hand and the seal of said district court this 24th day of December, 1885.

[SEAL.]

R. W. WEBB, *Clerk*,
By S. BURKHART, *Deputy*.

40 And afterwards, to wit, on the fourth day of January, 1886, being the first day of the regular January, 1886, term of said supreme court, there was filed by said plaintiff in error in said clerk's office an assignment of errors, which is in the *ow*rds and figures following, to wit:

In the Supreme Court of the Territory of New Mexico.

JAMES P. STONEROAD, Plaintiff in Error, *vs.* GEORGE W. STONEROAD, Defendant in Error.	No. —. Error to the First Judicial District Court, San Miguel County, New Mexico.

And the said James P. Stoneroad, plaintiff in error, comes, by his attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

First. That the verdict of the jury in said cause was against the evidence and the weight of the evidence in said cause.

Second. That the court erred in instructing the jury to find a verdict for the plaintiff below in said cause.

Third. That the court erred in refusing to instruct the jury in said cause to find a verdict for the defendant below in said cause.

Fourth. That the court erred in refusing to instruct the jury as asked by the defendant below.

Wherefore he prays judgment and that said judgment in said district court may be reversed and annulled and that he may be restored to all things he has lost thereby.

E. B. SEWARD,
Attorney for Plaintiff in Error.

And afterwards, to wit, on the tenth day of the regular January, 1886, term of the supreme court of the Territory of New Mexico, held at Santa Fé on the first Monday of January, 1886, the same being January 14, 1886, the following, among other, proceedings were had, to wit:

JAMES P. STONEROAD, Plaintiff in Error, *vs.* GEORGE W. STONEROAD, Defendant in Error.	250. Error to San Miguel County.

It is ordered that this cause be, and the same hereby is, set down for argument at the incoming of court on the fourth Monday of the present term.

And afterwards, to wit, at the regular January term, 1887, of said supreme court, begun and held at Santa Fé on the first Monday of January, 1887, and on the second day of said term, the same being Tuesday, January 4, 1887, the following, among other, proceedings were had, to wit:

JAMES P. STONEROAD, Pl'ff in Error,
vs.
GEORGE W. STONEROAD, Def't in Error. } 250. Ejectment. Error to San Miguel County.

41 By agreement of said parties, by their respective attorneys, this cause is now submitted to the court upon the briefs now on file herein and the record and assignment of errors.

And afterwards, to wit, on the twenty-first day of the same term of said court last aforesaid, the same being January 27, 1887, the following, among other, proceedings were had, to wit:

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error. } 250. Error to San Miguel County.

This cause having been submitted to and taken under advisement by the court at a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice Henderson, affirming the judgment of the court below for reasons stated in the opinion on file, Associate Justice Brinker concurring; it is therefore considered and adjudged by the court that the judgment in this cause of the first judicial district court of this Territory, sitting in and for San Miguel county, whence this cause came into this court, be, and the same hereby is, affirmed, and that in accordance therewith said defendant in error, George W. Stoneroad, plaintiff below, recover of said plaintiff in error, James P. Stoneroad, defendant below, the possession of the following-described lands and premises, situate within the county of San Miguel, Territory of New Mexico, to wit, all and singular that certain tract or grant of land commonly known and called the Preston Beck grant, situate in the said county of San Miguel and Territory of New Mexico, and more particularly described and bounded as follows: On the north by the landmarks of the farm or land of Don Antonio Ortiz and the table-land of the aguage de la Yegua, on the south by the Pecos river, and on the east by the table-land of Pajarito, and on the west by the point of the table-land of Chupaines, and that he have a writ of possession therefor.

And it is further considered and adjudged by the court that said defendant in error, George W. Stoneroad, recover of said plaintiff in error, James P. Stoneroad, his costs in this behalf expended as well in the lower court as in this court, to be taxed, and that he have execution therefor.

And afterwards, to wit, on the 24th day of January, 1889, there was filed in said clerk's office a writ of error from the Supreme Court

of the United States, the original of which is hereto attached and is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the Territory of New Mexico, Greeting:

Because in the record and proceedings, as also in the rendition of judgment in the said supreme court of the Territory of New Mexico, before you, in a suit between James P. Stoneroad, plaintiff in error, and George W. Stoneroad, defendant in error, a manifest error hath happened, to the great damage of the said James P. Stoneroad, as by his complaint appears—

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given,
42 that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, 1889, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the supreme court of the Territory of New Mexico, this 24th day of January, A. D. 1889.

R. M. FOREE,
Clerk Supreme Court of the Territory of New Mexico.

And afterwards, to wit, on said 24th day of January, 1889, there was filed in said clerk's office a citation in said cause, the original of which, with the *ne*dorsements thereon, is hereto attached, and is in the words and figures following, to wit:

The President of the United States to George W. Stoneroad, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein James P. Stoneroad is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elisha V. Long, chief justice of the su-

And afterwards, to wit, at the regular January term, 1887, of said supreme court, begun and held at Santa Fé on the first Monday of January, 1887, and on the second day of said term, the same being Tuesday, January 4, 1887, the following, among other, proceedings were had, to wit:

JAMES P. STONEROAD, Pl'ff in Error,
vs.
GEORGE W. STONEROAD, Def't in Error.
} 250. Ejectment. Error to San Miguel County.

By agreement of said parties, by their respective attorneys,
41 this cause is now submitted to the court upon the briefs now on file herein and the record and assignment of errors.

And afterwards, to wit, on the twenty-first day of the same term of said court last aforesaid, the same being January 27, 1887, the following, among other, proceedings were had, to wit:

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error.
} 250. Error to San Miguel County.

This cause having been submitted to and taken under advisement by the court at a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice Henderson, affirming the judgment of the court below for reasons stated in the opinion on file, Associate Justice Brinker concurring; it is therefore considered and adjudged by the court that the judgment in this cause of the first judicial district court of this Territory, sitting in and for San Miguel county, whence this cause came into this court, be, and the same hereby is, affirmed, and that in accordance therewith said defendant in error, George W. Stoneroad, plaintiff below, recover of said plaintiff in error, James P. Stoneroad, defendant below, the possession of the following-described lands and premises, situate within the county of San Miguel, Territory of New Mexico, to wit, all and singular that certain tract or grant of land commonly known and called the Preston Beck grant, situate in the said county of San Miguel and Territory of New Mexico, and more particularly described and bounded as follows: On the north by the landmarks of the farm or land of Don Antonio Ortiz and the table-land of the aguage de la Yegua, on the south by the Pecos river, and on the east by the table-land of Pajarito, and on the west by the point of the table-land of Chupaines, and that he have a writ of possession therefor.

And it is further considered and adjudged by the court that said defendant in error, George W. Stoneroad, recover of said plaintiff in error, James P. Stoneroad, his costs in this behalf expended as well in the lower court as in this court, to be taxed, and that he have execution therefor.

And afterwards, to wit, on the 24th day of January, 1889, there was filed in said clerk's office a writ of error from the Supreme Court

of the United States, the original of which is hereto attached and is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the Territory of New Mexico, Greeting:

Because in the record and proceedings, as also in the rendition of judgment in the said supreme court of the Territory of New Mexico, before you, in a suit between James P. Stoneroad, plaintiff in error, and George W. Stoneroad, defendant in error, a manifest error hath happened, to the great damage of the said James P. Stoneroad, as by his complaint appears—

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given,
42 that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, 1889, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the supreme court of the Territory of New Mexico, this 24th day of January, A. D. 1889.

R. M. FOREE,
Clerk Supreme Court of the Territory of New Mexico.

And afterwards, to wit, on said 24th day of January, 1889, there was filed in said clerk's office a citation in said cause, the original of which, with the *ne*dorsements thereon, is hereto attached, and is in the words and figures following, to wit:

The President of the United States to George W. Stoneroad, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein James P. Stoneroad is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elisha V. Long, chief justice of the su-

preme court of the Territory of New Mexico, this 24th day of January, A. D. 1889.

ELISHA V. LONG,
Chief Justice of the Supreme Court of the Territory of New Mexico.

For defendants in error I hereby accept service this January 24th, A. D. 1889, of the foregoing notice and citation and acknowledge the same to have been duly served on me, as one of the attorneys for the defendants in error, Jan'y 24th, 1889.

T. B. CATRON,
Attorney for De'ts in Error.

And afterwards, to wit, on said January 24th, 1889, there was filed in said clerk's office an affidavit of value in said cause, which is in the words and figures following, to wit (the original being attached to this transcript):

In the Supreme Court of the Territory of New Mexico.

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error.

43 STATE OF KANSAS,
County of Sedgwick.

James P. Stoneroad, being duly sworn, deposes and says that he is the plaintiff in error in the above-entitled cause and that the value of the property in controversy in said cause exceeds the amount of five thousand dollars, exclusive of costs and fees.

JAMES P. STONEROAD.

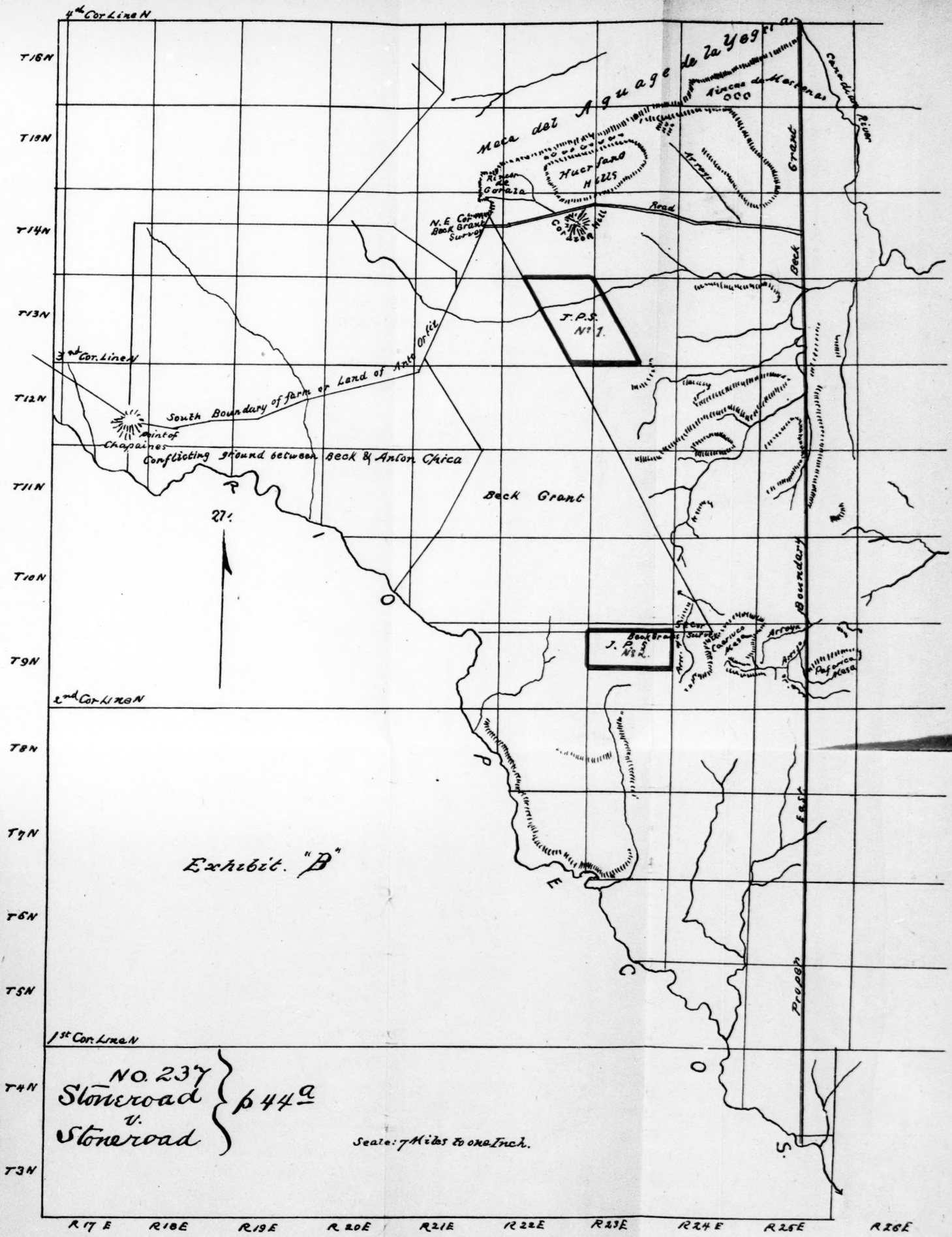
Subscribed and sworn to before me this 14 day of December, 1888.

S. DUNKIN,
[SEAL.] *County Clerk.*

And afterwards, to wit, on said January 24th, 1889, there was filed in said clerk's office a bond for costs, which is in the words and figures following, to wit (the original being attached to this transcript):

Know all men by these presents that we, Frank Springer and Harry S. Clancy, of the county of Santa Fé and Territory of New Mexico, are held and firmly bound unto James H. McKenney, clerk of the Supreme Court of the United States, in the full and just sum of five hundred dollars, current money of the United States, to be paid to the said James H. McKenney, his heirs, executors, and administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of January, in the year of our Lord eighteen hundred and eighty-nine.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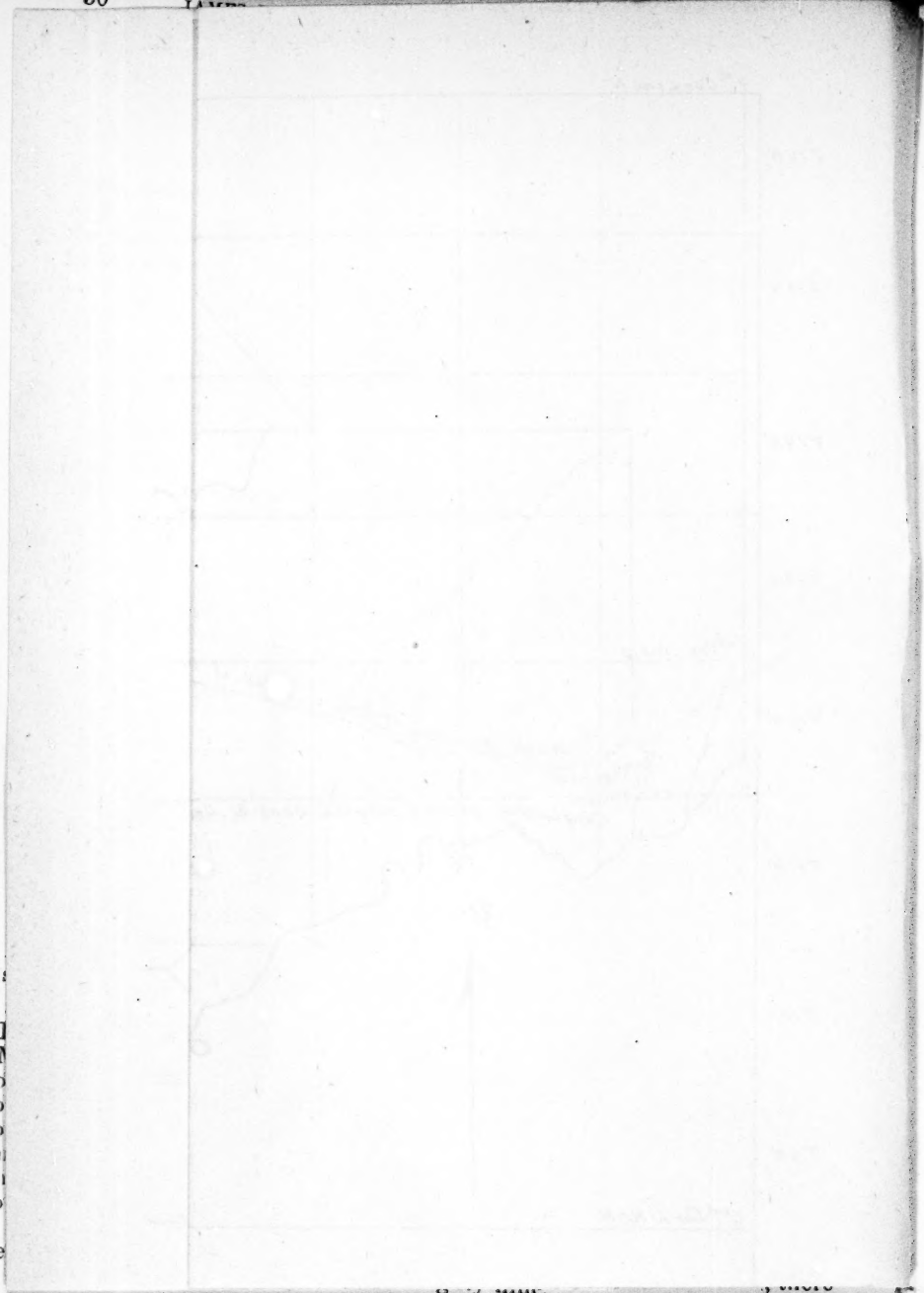
R21E
R22E
R23E
R24E
R25E
R26E
Mesa del Aguage de la Yegua
Sierra de Huerfano
Huerfano Hills
Arroyo
Road
Rincon de Gonaza
N.E. Cor. Beck Grant Survey
Corrasco Well
T.P.S. No 1.
Beck Grant
Beck Boundary
Canadian River
Grant
South Boundary of farm or Land of Anto Ortiz
Point of Chapaines
Conflicting ground between Beck & Anton Chica
J.P. No 2.
Beck Grant
Cuerico Mesa
Arroyo
Pajarito Mesa
Exhibit "B"
NO. 237
Stoneroad
v.
Stoneroad
p 44a
Scale: 7 Miles to one Inch.



Whereas in a suit lately depending in the supreme court of the Territory of New Mexico between James P. Stoneroad, plaintiff in error, and George W. Stoneroad a judgment was rendered against the said plaintiff in error, and the said plaibtiff in error having obtained a writ of error to remove the said cause to the Supreme Court of the United States and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the aforesaid suit:

Now, the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said James H. McKenney, clerk as aforesaid, and charged to the said plaintiff in error in the prosecution of the said writ of error, then the above obligation to be void; otherwise to remain in full force and virtue.

FRANK SPRINGER. [SEAL.]
HARRY S. CLANCY. [SEAL.]

I, R. M. Foree, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

[SEAL.] R. M. FOREE,
Clerk of the Supreme Court of the Territory of New Mexico.

44 TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

I, R. M. Foree, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a true, full, and perfect transcript of the record of proceedings had and judgment given in the cause lately pending in said supreme court of the Territory of New Mexico in which James P. Stoneroad was plaintiff in error and George W. Stoneroad was defendant in error as the same now appear- of record in my office.

Witness my hand and the seal of said supreme court this 24th day of January, 1889.

[Seal Supreme Court, Territory of New Mexico.]

R. M. FOREE, *Clerk.*

(Here follows map marked p. 44*a*.)

Opinion of said Supreme Court in said Cause.

45 In the Supreme Court, Territory of New Mexico, January Term, 1887.

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error. } 250. Ejectment.

Error to the district court, county of San Miguel.

The defendant in error, George W. Stoneroad, brought an action of ejectment against the plaintiff in error, James P. Stoneroad, to recover possession of two pieces or tracts of land alleged to be within and constituting a portion of a larger tract known as the Preston Beck grant, situated in San Miguel county. The two pieces of land occupied by defendant at the date of the commencement of this suit and held adversely by him lie within the boundary calls of the Preston Beck grant, but without the limits of a survey thereof made by the government without notice to the owners and in which the claimants have never acquiesced. The cause was tried at the August term, 1885, which resulted in a verdict for the plaintiff under direction from the court.

Upon the trial the defendant in error introduced in evidence a true copy of the original and official translation of the original espediente of said grant and of all proceedings had and papers and documents filed before and with the United States surveyor general for New Mexico and the decision of the surveyor general approving the grant; a map, Exhibit R, showing the objects given as boundary calls and the location thereon of the two pieces so held by the plaintiff in error. He also introduced oral evidence showing that the land sued for was within the boundary calls of said grant. The plaintiff in error admitted that he was in possession. He also admitted and stipulated to the correctness of the location of the Pecos river, a boundary call in the grant, and of the pieces of land held adversely by him, as shown by "Exhibit R," and that the defendant in error had an undivided one-third of all the right and title of the original grantee in said grant; that said grant was duly confirmed by Congress under the act of June 21st, 1860, and that the same had been surveyed without notice to the claimants, and at the time of such survey some of the said claimants were minors and married women and had not acquiesced in the same. Plaintiff in error offerred nothing in evidence. On the 6th of December, 1823, Juan Estevan Pino petitioned the governor of the province of New Mexico for a grant of land in this territory, now a portion of San Miguel county, bounded as follows: On the north by the land-marks of the farm or land of Don Antonio Ortiz and the table-land of the aguage de la Yegua, on the south by the Pecos river, on the east by the table-land of the Pajarito, and on the west by the point of the table-land *land* of the Chupaines, and on the 23rd of the same

month and year the political chief or acting governor, by direction of the most excellent deputation, made the grant, reciting in the granting decree the same boundaries as set out in the petition of Pino, and directing that the said Pino as grantee be put into possession by the alcalde, which was accordingly in due form done. Pino occupied the land until his death, and subsequently thereto his heirs sold to Preston Peck, who presented the claim to the surveyor general of the Territory on May 10th, 1855, for investigation and decision, as required by the 8th section of Congress, act of July 22nd, 1854. After taking testimony and a due consideration
46 of the case the surveyor general recommended that Congress confirm the grant to Preston Beck, Jr., and by act of Congress approved June 21st, 1860, the same was confirmed, according to the report of the surveyor general, as No. 1. The surveyor general had the grant surveyed and the said survey approved by him November, 1860. No notice, however, of this survey was given to the claimants so far as the records show. The act of Congress of June 21st, 1860, confirmed the grant as reported.

Plaintiff in error assigns the following:

1. That the verdict of the jury in said cause was against the evidence and the weight of the evidence in said cause.

2. That the court erred in instructing the jury to find a verdict for the plaintiff below in said case.

3. That the court erred in refusing to instruct the jury in said cause to find a verdict for the defendant.

4. That the court erred in refusing to instruct the jury as asked by the defendant below.

The single question under the facts stipulated and proven in this cause is, does the survey made after the grant was confirmed conclude the court from determining the extent and validity of the grant made by the Mexican government by specific boundary calls, and afterwards, under the act of Congress of 1854, duly examined into and approved by the surveyor general, approved by the Land Department of the United States, and confir-ed by act of Congress? That the plaintiff in error was in possession and holding two parcels of land embraced within the limits of the Preston Beck grant, as confirmed by Congress, if the boundary calls are to govern as to the extent, is admitted. It is also admitted that these lands so held by him are without the limits of the survey, but near the line. It is further shown that the pieces so held as shown by the map lie some ten or twelve miles within the limits of the grant, provided that the grant is to be upheld as petitioned for and granted by the Mexican government, and of which he was put into juridical possession by the duly authorized officer of the Mexican government. The surveyor general pursued the same description in his report, and the act of Congress confirmed it as reported.

It is conceded by both parties that where lands are to be surveyed by our Government the rules adopted by the Interior Department in surveys of grants like the one in question, where boundary calls are given, is to draw a straight line north and south or east and west through such point on the side of the tract of which it consti-

tutes such boundary to the intersection of the boundaries on the other sides, and where the call is a meanderable object, such as a river, mesa, mountain, or arroyo, it should be meandered to the extent that it constitutes such boundary within the projected lines of the other sides.

See Copp's Public Land Laws, vol. 2, page 1276, Ortiz Mine Lease; United States *vs.* Soto *et al.*, 1 Hoffman, L. C., 182; Tyler's Law of Boundaries, pages 29, 187, & 188.

It is not shown in the record that Preston Beck or any person holding under him ever applied to the Government to have a survey made or for a patent. It has not been urged that there is any act of Congress making it obligatory upon the confirmance of a grantor or those holding under him to have the grant surveyed or to
47 call for a patent, nor is it insisted that there was any regulation of the executive department, having the force of law, making it obligatory on the surveyor general to survey such grants after confirmation in operation at the date of the survey in 1860.

If we apply the rule above stated governing the survey of a Mexican or Spanish grant, it is obvious that the plaintiff in error was in possession of lands belonging in part to the defendant in error at the date of the institution of this suit.

The contention on behalf of plaintiff in error is that, after the survey, the defendant in error and all other claimants under the grant are concluded by the survey, and that in an action of ejectment the survey estops the plaintiff from asserting title to a greater quantity of land than is included therein.

In support of this position the case of Gallagher *vs.* Filey, 49 Cal., 473, and Boyle *vs.* Hinds, 2 Sawyer, 527, are cited. In Boyle *vs.* Hinds the Mexican government in 1839 granted a rancho called Estero Americano to Edward Manuel McIntosh. The grant was for two square leagues within certain designated boundaries, embracing six or more square leagues. It contained the usual provision for measuring the land and leaving the surplus to the nation. The grant was approved by the departmental assembly. Afterwards juridical possession was given by the alcalde of the jurisdiction within which the land was situated. The juridical possession was regular in all respects. This possession embraced six instead of ten squares leagues. Prior to 1850 McIntosh conveyed his grant to O'Farrell, who, in 1852, presented the grant for confirmation, and it was subsequently confirmed to the extent of two leagues only. It was surveyed and patented for about two leagues. O'Farrell took his patent without objection and placed it on record in the recorder's office of the county in which the lands were situated. The lands in question lie within the juridical possession given to McIntosh, but without the limits of the final survey and the patent issued to O'Farrell. The patent was issued to O'Farrell after the final decree of confirmation. After that decree the Government patented the lands in controversy to Hinds as pre-emptor, who was in possession when the suit was brought. In delivering the opinion Sawyer, J., said:

"The plaintiff claims that McIntosh has a perfect Mexican title, and that it was unnecessary for his grantee, O'Farrell, to present

his claim for confirmation; that, his title being perfect, Congress had no constitutional power to deprive him of his land in case of his failure to present his claim under the act of 1851. Under the view I take, it may be conceded that it was unnecessary to present the claim, but the claimant did present his grant and submit it to examination and asked its confirmation under the act of Congress. The question as to the genuineness and extent of the grant were litigated between the Government and the claimant before a tribunal having jurisdiction to determine them. The grant was confirmed to the extent of two leagues and no more. The juridical possession was put in evidence and the extent of the land to which the claimant was entitled in fact determined. The claimant did not appeal and the determination became final. He had a right of appeal under the act and could have gone from court to court and ultimately had the question directly adjudicated by the Supreme
48 Court of the United States in that proceeding whether he had a title to the full extent of the juridical possession or not. The same court would then have passed upon his title in a direct proceeding to establish his claim to the whole that are now called upon to determine the same question collaterally. The law afforded him tribunals to determine this very question between him and the United States. The owner of the grant availed himself of the right afforded by the act of Congress, and the question between him and the United States was litigated and determined.

If the claimant chose to accept the decision of the inferior tribunals, he is bound by it."

It was also held that by the 15th section of the act of 1851 the adjudication between the Government and the claimant became final and must for that reason be considered as *res adjudicata*. The proceedings in the case, ending in a decree limiting the confirmance to two leagues, was clearly judicial and was final and binding on the parties. In that case the survey and patent but carried out the decree of confirmation. It was for these reasons held that the patent was the final authentic record of the proceedings and was conclusive evidence between the parties of the extent of the grant and the correctness of the location. There is nothing in this case to guide or control us in reaching a correct conclusion on the facts presented in the transcript before us. In the case above quoted the owner of the grant submitted his claim to a court of competent jurisdiction and actually litigated with the United States upon the very question of the extent of his grant under the title derived from Mexico and the act of juridical possession. The way was open to him upon an adverse decision to appeal finally, if necessary, to the Supreme Court of the United States. He submitted to an adverse decision without appeal and thereby waived or lost the right to dispute with the Government or its grantee the title to any portion of the lands lying within the terms of the decree, survey, and patent. Gallagher *vs.* Riley, 49 Cal., *supra*, goes no further than to declare that in the Mexican grants where no juridical possession is given and the grant is of a quantity of land as distinguished from a particular piece by specific boundaries a survey after confirmation by

Congress is necessary and is made so by the 13th section of the act creating the board of land commissioners. (1851.)

Wallace, C. J., in delivering the opinion, said:

"In excluding the prof-erred evidence the court below erred. If the survey had become final, as the plaintiff proposed to prove, it was conclusive of the boundaries of the Rancho Laguna de San Antonio. The court below was mistaken in supposing that the confirmation to Bartolomo Bojorques was for a 'specific piece of land.'

The quantity confirmed was six leagues in superficial area. The land confirmed was to be hereafter surveyed, located, and set apart to the confirmee by the proper authorities of the United States, and if the survey had become final, as the plaintiff offered to show, it was conclusive evidence in the action of the boundaries of the tract confirmed." In the latter case it was agreed that the defendant had the possession of lands lying within the diseno or map describing the extent of the grant, but without the survey.

The quantity confirmed in the California grant was six leagues in superficial area, "being the same on which the said petitioner resides and bordering towards the northeast on lands
49 known in November, A. D. 1845, as the lands of Juan Martin; toward the northwest on Los Dos Piedros; toward the southwest on Los Tomales, and towards the northeast on lands known at the date last mentioned as the lands of Juan Miranda, the said premises being of the extent of six square leagues."

The plaintiff offered to prove that the survey, plat, and fieldnotes made by the surveyor general of the State of California of said Rancho Laguna de San Antonio *was* filed in the office of the said surveyor general on the 10th day of March, 1859, and approved by him on said day; that said surveyor general immediately thereafter, to wit, on the 15th day of March, 1859, gave due notice by publication according to law that said claim had been surveyed and a plat thereof made and filed as aforesaid; that no objection had been made, and further offered to show that said survey had become final.

The court simply said that if the plaintiff could have proved that the survey was made as required by the statute in force in that State at that time, after due and proper notice to all persons interested in the grant, and that no objection had been made and the survey was final, it conclusively settled the boundaries of the grant. It will be noticed that the decision was rendered after the act of 1851 was passed and the parties in interest had submitted to the decision of a tribunal clothed with ample authority to finally settle disputed claims between grant-owners and the Government of the United States and as between conflicting and adversary claimants. After the land board had rendered judgement in cases like the one considered in Gallagher *vs.* Riley, it became necessary and was a part of the system adopted to have a survey made and assign the quantity to which the claimant was entitled, thereby segregating his claim from the public domain. The final survey became a necessary part of the proceedings in cases of quantity grants in

order to accurately locate the boundaries. Notice of such survey was, however, necessary. The act expressly conferred the power upon the surveyor general to do what he did in that case. His act done in pursuance of such expressed authority and upon notice ought to have bound the claimants. There was no expressed duty imposed by the terms of the act of Congress of 1854, creating the office and defining the duties of the surveyor general of this Territory. There is no evidence before us that any notice was ever given by the surveyor general of the Territory of New Mexico of his survey in 1860. The stipulation on file shows that no such notice was ever given.

The grant in the case before us was a perfect one, made in 1823 by the Mexican government. This is admitted by plaintiff is error, or, at all events, he does not offer any objection to it on account of not conforming to some requirement of the laws of Mexico. It covers all the lands lying within certain named and well-known boundaries. The grant or patent made by Bartolome Baca, acting superior political chief of the province of New Mexico, after reciting the power conferred on him and the previous consent of the most excellant provincial deputation of the Territory, proceeds as follows: "I have granted and by this patent do grant in the name of the supreme government of the nation to Don Juan Estevan Pino the land he solicits on the Gallinas river, which shall be called the Hacienda of San Juan Bautista del Ojito del Rio de Las Gallinas, recognizing the boundaries on the north the landmarks
50 of the farm of Don Antonio Ortiz and the table-land of the aguage de la Yegua; on the south the Pecos river; on the east the table-land of Parjarito; on the west the table-land of the Chupaines, on which fixed points you will place formal and well-constructed boundaries, so that in all times to come the dividing line of the land granted to him may be known.

The alcalde, in obedience to directions from superior authority and in strict conformity to law, put the grantee into juridical possession of the lands embraced in the grant as lying within the boundaries given. The surveyor general reported this grant for confirmation, following the description contained in the petition of Pino and the grant from the Mexican government. The act of Congress confirms the grant as reported. In United States *vs.* Halleck, 1 Wall., at page 455, Field, J., in passing upon a question of survey in that case, said:

"The material question for determination is whether the survey approved conforms to the decree of confirmation. There must be a reasonable conformity between them or the survey cannot be sustained."

The survey here is not by many miles in conformity with the boundary calls of the grant and the act of confirmation. It is at one point some ten miles within the line of the grant when drawn as prescribed by the rules of the Interior Department. There is no reasonable conformity, and the result is that the survey cannot be sustained unless for reasons hereafter stated.

In U. S. *vs.* Pico, 5 Wall., 536, the court said:

"Were there any doubt of the intention of the governor to cede all the land contained within the boundaries designated by him, it would be removed by the juridical possession delivered to the grantees. This proceeding involved an ascertainment and settlement of the boundaries of the lands granted by the appropriate officers of the Government specially designated for that purpose and has all the force and efficacy of a judicial determination. It bound the former government and is equally binding upon the officers of our Government."

Such is the purport of the recent decision in the case of Graham *vs.* United States, 4 Wall., 260.

See also Leese *vs.* Clark, 18 Cal., 567; Page *vs.* Scheibel, 11 Mo., 187.

In United States *vs.* Graham, 4 Wall., 259, Mr. Justice Field, in speaking of the effect of the juridical possession, used this language: "By this proceeding, called in the language of the country the delivery of juridical possesson, the land granted was separated from the public domain, and what was previously a grant of quantity became a grant of specified tract. The record of the proceeding of this nature must necessarily control the action of the officers of the United States in surveying land claimed under a confirmed Mexican grant." In the grant to Pino juridical possession was delivered to him by the description and boundary calls above stated. The south line was the Pecos river. The survey does not follow the specific and well-defined natural objects named in the grant and act of juridical possession as boundary lines and calls. If the record made by an officer after delivering possession is binding upon the officers of our Government, it follows that the act of delivering such juridical possesson by such clearly and distinctly defined boundary lines as in this case ought to be equally obligatory
51 and binding upon the officers of our Government. Had it been uncertain what land the gover-ment of Mexico intended to convey to Pino or the grant had been of a quantity within defined exterior limits it would have been necessary for the officer to have measured the lands and fixed boundaries and to have made some record of the act; otherwise a new survey by our Government would have been necessary to separate the granted lands from the public domain. The boundaries given and the rule for measurement ascertained, it is mathematically certain what lands were granted. Mr. Justice Davis, in Ryan *et al. vs.* Carter *et al.*, 3rd Otto, p. 82, in speaking of the act of Congress confirming lots and lands in the Territory of Missouri to the inhabitants of certain towns and villages under the act of 1812, said: "It does not require the production of proofs before any commission or other tribunal established for that special purpose, but confirms *proprio vigore* the right, title, and claims to the lands embraced within it and operates as a grant to all intents and purposes. Repeated decisions of this court have declared that such statute passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by law as well as by a patent pursuant to law."

In Tamerling *vs.* U. S. Freehold Co., 3 Otto, 644, Mr. Justice Davis,

in passing upon the effect of an act of Congress confirming a Mexican grant, said: "Congress acted upon the claim as recommended for confirmation by the surveyor general. The confirmation being absolute and unconditional, without any limitation as to quantity, we must regard it as effectual and operative for the entire tract." The court reaffirmed the doctrine that an act of confirmation passes the title of the United States as effectually as if it contained in terms a grant *de novo*, and that a grant may be made by law as well as by a patent pursuant to law. The act of June 21st, 1860, confirmed to the claimant, Preston Beck, Jr., the entire tract, as recommended by the surveyor general, without any limitation as to quantity or other condition whatever. Plaintiff in error cites U. S. *vs.* Flint, 4 Sawyer, 61, as supporting his position in favor of the validity of the survey. In concluding the opinion Justice Field, of the Supreme Court, said:

"The courts can only examine into the correctness of a survey in a controversy between parties when it is alleged that the survey made infringes on the prior rights of one of them, and can then look into it only so far as may be necessary to protect such right." The right here alleged is a prior right, and we are asked to look into the survey only so far as to protect such prior right. The attorney of record for the plaintiff in error filed no brief. The only authorities presented were submitted by the U. S. attorney. The facts stated in the record were stipulated and filed in the court below. We have had our attention called to no case of a similar character arising under the act of July 22nd, 1854. The decisions of the courts referred to under the California acts of 1851 and 1860 afford us very little aid in construing the powers of the surveyor general of New Mexico under the act of 1854. We have kept in view the fact that at the date of the survey, November, 1860, some of the claimants were minors, while others were married women, who would not be bound by the act of the surveyor general to their prejudice unless it was the evident and very clear intention
52 on the part of Congress of the United States to give the survey the effect claimed here. We do not think it was the intention of Congress to confer any such power by the enactment of that statute.

Finding no error in the record, the judgment of the court below will be affirmed.

W. F. HENDERSON,
Associate Justice.

We concur.
W. H. BRINKER, *J.*
ELISHA V. LONG, *C. J.*

TERRITORY OF NEW MEXICO, }
County of Santa Fé. }

I, —— ——, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing seven pages and twelve line- contain a true and perfect copy of the opinion of the said su-

preme court in the cause lately depending therein in which James P. Stoneroad was plaintiff in error and George W. Stoneroad was defendant in error, as the same is on file and of record in my office.

Witness my hand and the seal of said supreme court this 25th day of January, 1889.

[Seal Supreme Court, Territory of New Mexico.]

R. M. FOREE, *Clerk.*

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the Territory of New Mexico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in the said supreme court of the Territory of New Mexico, before you, in a suit between James P. Stoneroad, plaintiff in error, and George W. Stoneroad, defendant in error, a manifest error hath happened, to the great damage of the said James P. Stoneroad, as by his complaint appears—

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Seal Supreme Court, Territory of New Mexico.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the supreme court of the Territory of New Mexico, the 24th day of January, A. D. 1889.

R. M. FOREE,
Clerk Supreme Court of the Territory of New Mexico.

[Endorsed:] Filed in my office 24 day of Jan., 1889. R. M. Foree.

54 The President of the United States to George W. Stoneroad, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of New Mexico, wherein James P. Stoneroad is plaintiff in error and you are defendant in error, to show cause, if any there be, why the

judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elisha V. Long, chief justice of the supreme court of the Territory of New Mexico, this 24th day of January, A. D. 1889.

Seal Supreme Court, Territory of New Mexico.

ELISHA V. LONG,
Chief Justice of the Supreme Court of the Territory of New Mexico.

For defendants in error I hereby accept service this January 24th, A. D. 1889, of the foregoing notice and citation and acknowledge the same to have been duly served on me as one of the attorneys for the defendants in error.

Jan'y 24, 1889.

T. B. CATRON,
Attorney for Def'ts in Error.

[Endorsed:] Filed in my office 24 day of Jan., 1889. R. M. Foree, clerk.

55 In the Supreme Court of the Territory of New Mexico.

JAMES P. STONEROAD, Plaintiff in Error,
vs.
GEORGE W. STONEROAD, Defendant in Error.

STATE OF KANSAS,
County of Sedgwick.

James P. Stoneroad, being duly sworn, deposes and says that he is the plaintiff in error in the above-entitled cause, and that the value of the property in controversy in said cause exceeds the amount of five thousand dollars, exclusive of costs and fees.

JAMES P. STONEROAD.

Subscribed and sworn to before me this 14 day of December, 1888.

[Seal Clerk of Sedgwick County, Kansas.]

S. DUNKIN,
County Clerk.

56 [Endorsed:] In the supreme court, Territory of New Mexico. James P. Stoneroad, pl'ff in error, *vs.* George W. Stoneroad, def't in error. Affidavit of value. Filed in my office this 24th day of January, 1889. R. M. Foree, clerk,

57 Know all men by these presents that we, Frank Springer and Harry S. Clancy, of the county of Santa Fé and Territory of New Mexico, are held and firmly bound unto James H. McKenney, clerk of the Supreme Court of the United States, in the full and just sum of five hundred dollars, current money of the United

States, to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of January, in the year of our Lord eighteen hundred and eighty-nine.

Whereas lately, in a suit depending in the supreme court of the Territory of New Mexico between James P. Stoneroad, plaintiff in error, and George W. Stoneroad, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error to remove the said cause to the Supreme Court of the United States, and filed a transcript of the record of said court in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the aforesaid suit:

Now, the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said James H. McKenney, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said James H. McKenney, clerk as aforesaid, and charged to the said plaintiff in error in the prosecution of the said writ of error, then the above obligation to be void; otherwise to remain in full force and virtue.

FRANK SPRINGER. [SEAL.]
HARRY S. CLANCY. [SEAL.]

I, R. M. Foree, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

[Seal Supreme Court, Territory of New Mexico.]

R. M. FOREE,
Clerk of the Supreme Court of the Territory of New Mexico.

53 [Endorsed:] Filed in my office 24 day of Jan., 1889. R. M. Foree, clerk.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

The within bond, both as to the penalty and sufficiency of the surety, is by me this day accepted and approved.

September 25, 1889.

ELISHA V. LONG,
Chief Justice, &c.

Endorsed on cover: Case No. 13,847. New Mexico Territory supreme court. No. 237. James P. Stoneroad, plaintiff in error, *vs.* George W. Stoneroad. Filed October 21, 1889.

IN THE SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, 1893.

James P. Stoneroad,
Plaintiff in Error,
vs.
George W. Stoneroad,
Defendant in Error.

No......

BRIEF FOR PLAINTIFF IN ERROR.

ABSTRACT OF RECORD—QUESTIONS INVOLVED

This action originated in the district court of San Miguel county, Territory of New Mexico. The defendant in error filed in said court his declaration in ejectment against the plaintiff in error. It is in the usual form and is set forth on *pages 3 and 4 of the Record.* The plaintiff in error joined issue on such declaration by filing a plea of not guilty. *Record, page 5.*

The issue was submitted to a jury, and under an instruction given by the court to the jury to return a

verdict in favor of the defendant in error, such a verdict was returned. *Record, page 5.*

The plaintiff in error filed his motion for a new trial, assigning reasons therefor, which motion was overruled by the court, and final judgment was entered for the defendant in error. *Record, page 6.*

The plaintiff in error filed in said court his bill of exceptions, setting out the evidence given upon the trial of said cause, as well as the exceptions taken by the plaintiff in error to the rulings and decisions of the court during the trial of the cause. *Record, pages 7 to 26.*

The cause was removed by the plaintiff in error from said district court to the supreme court of the Territory by a writ of error. In such court the plaintiff in error made assignments of error as follows:

1. That the verdict of the jury in said cause was against the evidence, and the weight of the evidence in said cause.

2. That the court erred in instructing the jury to find a verdict for the plaintiff below in said cause.

3. That the court erred in refusing to instruct the jury in said cause to find a verdict for the defendant below.

4. That the court erred in refusing to instruct the jury as asked by the defendant below.

On the hearing of the cause in the supreme court of the Territory, the judgment of the district court was affirmed. *Record, pages 32 to 39.*

The plaintiff in error then removed the cause to this court by writ of error, and has made in this court the following:

ASSIGNMENT OF ERRORS.

1. Error committed by the supreme court of the Territory of New Mexico in affirming the judgment of the district court of San Miguel county in said Territory.

2. Error committed by said supreme court in holding and deciding that the district court of San Miguel county did not err in giving to the jury an instruction in said cause to return a verdict in favor of the defendant in error.

3. Error committed by said supreme court in holding and deciding that the district court of San Miguel county did not err in refusing to instruct the jury in said cause to return a verdict therein in favor of the plaintiff in error.

4. Error committed by said supreme court in holding and deciding that the verdict of the jury rendered in said cause in said district court, was not against the evidence and the weight of evidence in said cause.

The facts disclosed by the bill of exceptions filed in the district court, containing the evidence given on the trial of said cause, are in substance these:

On May 10, 1855, Preston Beck, Jr., filed in the office of the surveyor general of New Mexico his petition under the 8th section of the act of congress of July 22, 1854, creating the office of surveyor general

of New Mexico, and prescribing his duties as to private land claims in said Territory. In said petition said Beck represented that he was the owner in fee of a certain tract of land situate in San Miguel county in said Territory, which tract was described as follows:

"And known as the 'Hacienda of San Juan Bautista del ojito del Rio de Las Gallinas' and bounded on the north by the land marks of the sitio of Don Antonio Ortiz, and the mesa of the Aguage de la Yegua, on the south by the river Pecos, on the east by the mesa of Pajarito, on the west by the point of the mesa of Chupaines."

Said Beck represented to said surveyor general that said land was granted to Juan Estevan Pino by the Mexican government, and that said Beck became the owner of the same by virtue of deeds of conveyance from the representatives of said Pino. He requested that the grant so made as aforesaid and his claim to such land might be confirmed. *See Record, pages 7 and 8, for petition.*

In the year 1856, said surveyor general made his report to congress upon said claim, in which he recommended that said grant and claim be confirmed. *Record, pages 14, 15 and 16.*

On June 21, 1860, congress confirmed such claim as recommended by such surveyor general, a copy of the confirmatory act being set on *page 19 of the Record*, it being the same as *section one on page 71 of Vol. 12, U. S. Statutes at Large.*

It further appears from a stipulation signed by the parties, and used as evidence on the trial of the cause, that the defendant in error, (plaintiff in the district court) was, at the time of such trial the owner of the undivided one-third part of the lands described in said petition to said surveyor general, and that the plaintiff in error (defendant in the district court) was, at the time of such trial, and had been for four years prior thereto, in possession of two tracts or parcels of land, the same being portions of the land described in said petition to said surveyor general, and with the out-boundaries given in said description. *See Record, pages 17 and 18, for such stipulation.*

It further appears from such stipulation and other evidence in said cause, that after the confirmation of such claim by congress, said grant or land was surveyed by the authorities of the United States without notice to any of the owners of said land, and that at the time of such survey a portion of such owners were minors and married women.

It is also made to appear that the two tracts or parcels of land in the possession of the plaintiff in error at the time of the trial, were situate without the limits of such survey, and that if such survey is correct, and fixes the true and correct lines of said grant, then the said tracts in the possession of the plaintiff in error are not within the boundaries of said grant and do not constitute a portion thereof.

It is seen, therefore, that the questions arising upon the record, are, did the evidence in the cause support

and establish the issue formed upon the declaration, in favor of the defendant in error, and was the action of the district court correct in charging the jury to return a verdict in favor of the defendant in error.

In order to solve these questions it is necessary to determine whether or not the defendant in error, and those under whom he claims, are precluded and bound by the said survey of said tract of land.

ARGUMENT AND AUTHORITIES.

Under the laws of the United States the commissioners of the general land office, under the direction of the Secretary of the Interior, is required to perform all duties appertaining to the surveying of the public lands of the United States, and also of private claim s or grants. *Sec. 453, R. Stat. U. S.*

Such commissioner must cause surveys of private land claims to be made, and must, in the first instance, decide as to their correctness, and from his decision an appeal may be taken by interested parties to the Secretary of the Interior.

In considering the duties and powers of the United States in relation to the survey and establishing the boundaries of private land claims, this court in the case of *West vs. Cochran, 17 Hon. 403*, uses this language:

"It was competent for congress to take up these titles or rights, and act on them either by legislating directly that each claimant should be confirmed, and have a perfect title to his actual possession lawfully acquired under France or Spain, without ascertaining in the act

of confirmation, or by special means provided therein, the bounds of claims confirmed. But it was also competent for congress to provide, that before a title should be given to any possessor, the exact limits of his possession, and the title which the United States was to give, should be defined, and that this should be done by such agencies, and in such manner as might be fixed by congress. This is in entire accordance with the provisions of the treaty, which guarantees to the inhabitants the rights of property secured to them; but it was not intended to provide for the particular modes and instrumentalities by which such rights should be ascertained and enforced—these being left to the nation to whose powers they were confided; so that the question is, what has congress deemed expedient? Now the policy which is obvious, and which has been acted on by the United States ever since they began to exercise power over the public lands, namely, to give defined limits to grants, may well be supposed to have actuated congress in 1807. The provisions of that act clearly show, that although congress intended that the commissioners should adjudge the existence of good titles to lands held under French and Spanish possessors, yet they did not intend that a final legal title, as against the United States, should be made to vague grants, until their bounds had been ascertained by the means there designated, and the particular tract defined by survey."

"Congress might have said, as was done in the case of the St. Louis town lots and out-lots, by the act of 1812, that each man should own what he had lawfully possessed under the former government; and if congress had done so, then the question would have been, in this instance, a matter of fact, to be tried by a jury, as to what the plaintiff did formerly possess, and consequently own. But congress having said, by the act of

1807, that he shall be confirmed in what shall be designated by a survey made under the authority of the United States, according to the direction of the board of commissioners, and such direction to survey being a condition which the judgment of confirmation carried along with it, until the survey was made, the plaintiff's title attached to no land, nor could a court of justice ascertain its boundaries, as this power was reserved to the executive department of the federal government."

This court in the case of *Maguire vs. Tylor, 1 Black*, had under consideration the powers and duties of the Commissioner of the General Land office and of the Secretary of the Interior, in relation to the survey of private land claims, and on *page 202 of the Report* uses this language:

"By the act of July 4, 1836, reorganizing the general land office, plenary powers are conferred on the commissioners to supervise all surveys of public lands, and also such as relate to private claims of land and the issuing of patents."

By the act of March 3, 1849, the Interior Department was established. The third section of the act vests the secretary, in matters relating to the general land office, including the powers of supervision and appeal, with the same powers that were formerly discharged by the Secretary of the Treasury."

See also Maguire vs. Tyler, 8 Wall. 650.

The same questions were before this court in the case of *Snyder vs. Sickles, 98, U. S. 203, and adverting to the case of Maguire vs. Tyler in 1 Black 195, and 8 Wall. 650, the court on pages 211-212 of 98 U. S.*, uses this language:

"Four points were decided in the first case, as follows: 1. That surveys under confirmations are, in regard to their correctness, within the jurisdiction of the commissioner, and that that officer has power to adjudge of the question of accuracy preliminary to the issuing of a patent. 2. That the Secretary of the Interior has the power of supervision and appeal in all matters relating to the general land office, and that that power is co-extensive with the authority of the commissioner to adjudge. 3. That the secretary, in the exercise of his supervisory powers, may lawfully set aside a survey made under a confirmed Spanish grant, and may order another to be made, and issue a patent upon it. 4. That when the construction of the acts of congress defining the powers of the Secretary of the Interior is drawn in question in a state court, and the decision is against the title supported by the decision of the secretary, this court has jurisdiction to revise the case."

Corresponding rules are adjudged to be correct in the second case, as appears from the following propositions:

"That the judicial tribunals, in the ordinary administration of justice, have no jurisdiction or power to deal with these incipient indefinite claims without survey or specific boundaries, either as to survey or fixing boundaries, but that such titles, until an authorized survey is made, attach to no land, nor can a court of justice ascertain its location or boundaries, as that power is reserved to the Executive Department.

Landes vs. Brant, 10 How. 370; West vs. Cochran, 17 Id. 414."

In the case of *Bullance vs. Forsyth, on page 185 of 24 How*, this court says:

"It is the settled doctrine of this court, that in the location and survey of claims arising under acts of

Congress like those of May, 1820, and March, 1823, the Executive Department of the government has, in general, exclusive jurisdiction, and all questions arising upon their location and survey are administrative in their nature, and must be disposed of in the land office."

The jurisdiction of the Land Department over the surveys of private land claims, and the effect of action by such department, was under consideration by the circuit court for the district of California, in the case of the *United States vs. Flint, reported in 4th Sawyer, 42.* The opinion in such case being prepared by Mr. Justice Field of this court, and on page 61 of said report he used the following language:

"As to the alleged error in the survey of the claim, it need only be observed that the whole subject of surveys upon confirmed grants, except as provided by the act of 1860, which did not embrace this case, was under the control of the Land Department, and was not subject to the supervision of the courts. Whether the survey conforms to the claim confirmed, or varies from it, is a matter with which the courts have nothing to do; that belongs to a department whose action is not the subject of review by the judiciary in any case, however erroneous. The courts can only examine into the correctness of a survey when, in a controversy between parties, it is alleged that the survey made infringes upon the prior rights of one of them; and can then look into it only so far as may be necessary to protect such rights. They cannot order a new survey, or change that already made."

The supreme court of California, in considering the same question, said:

"The approval of the survey by the proper officers is the determination, the judgment of one appropriate department of the government, that the survey does not

conform to such decree. That determination or judgment is not the subject of review by the judiciary. It is conclusive upon the courts in actions of ejectment, as the adjudication of a competent tribunal, upon a subject within its exclusive jurisdiction."

Moore vs. Wilkinson, 13 Cal. 478.

The portion of the opinion quoted being on page 488, and the opinion being written by Mr. Justice Field, now of this court.

See also *Gallagher vs. Riley, 49 Cal. 473.*

We think that the authorities cited and quoted from, establish very conclusively the following propositions:

1. That upon the confirmation by Congress of a private land claim in New Mexico upon a claim made by the confirmees of a grant by the government of Spain or Mexico prior to the acquisition of the Territory by the United States, the duty devolved upon the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, to cause such claim to be surveyed.

2. That when such a claim is so surveyed, the action of the Land Department in fixing the boundaries of such claim is final and conclusive between such confirmees and all persons claiming under them and the United States, and that the courts cannot inquire into the correctness of such survey, except when it is alleged that the same infringes upon the prior rights of persons who were not in any manner parties to the proceedings of confirmation.

The counsel for the defendant in error in the territorial supreme court, and such court in its decision,

seem to have considered that because the parties claiming the lands under the grant and confirmation were not notified of the survey made by the United States, that they were not bound thereby. In the absence of any law, or rule of the department, requiring notice to be given, none would be required. We are not aware of the existence of any such law or rule. The manner in which private grants or claims shall be segregated from the public domain is exclusively within the control of Congress, and if it is not provided that notice of public surveys shall be given, all persons must take notice thereof. In the stipulation as to facts used as evidence upon the trial it is stated: "That after said confirmation, a survey of said grant was made by the United States."

This survey, so far as appears from the evidence, was in force at the time of the trial, and no steps seem to have been taken to have the same set aside. If the survey was not satisfactory to the claimants of the grant they had the right of an appeal from the action of the Commissioner of the Land Office to the Secretary of the Interior, but we insist that they cannot attack the survey in a collateral proceeding as they have attempted to do so in the present case.

Again, counsel for defendant in error, and the territorial supreme court, seem to think that because at the time of the survey some of the owners of the grant were minors, and others were married women, that the survey is not binding on any one. We do not believe that because some of the owners of a private land claim are

under legal disabilities that the government is precluded from establishing the lines of such claim, and segregating the same from the public lands. If such was the rule it might often happen that there never would come a time when the boundaries of some such claims could be definitely fixed on account of the fact that some of the claimants were under legal disabilities. We apprehend that all persons, no matter what their condition, are bound by the surveys made by the proper officers.

The position is also assumed by connsel for the defendant in error that the grant made by the Mexican government was a perfect one, and therefore no action was required on the part of the United States in order to vest a fee simple title in the grantee and his assigns or legal representatives, to all the lands within the boundaries named in the grant papers. Be that as it may, the grantors of the defendant in error submitted their claim and title to the officers and tribunals provided by the United States for the adjudication and settlement of such claims, and we insist that the defendant in error is precluded by the decision and actions of such officers and tribunals.

In considering a question of this character, the circuit court for the district of California in the case of *Boyle vs. Hinds, reported in the 2nd Sawyer, page 527*, after setting forth the effect of the presentation of a perfect claim to the tribunal provided by congress for settling private claims in California, used the following language:

"This appears to me to be the result upon authority, as well as upon principles, where the claimant under a

Spanish grant, whatever the character of the grant may be, has presented his claim, litigated it with the government in the tribunals provided for the purpose, and had the genuineness and extent of the grant determined."

The following authorities lead to the conclusion:

Leese vs. Clark, 20 Cal. 423; 18 Ib. 571.

Teschemacher vs. Thompson, 18 Cal. 26.

Beard vs. Federy, 3 Wall. 491-2.

Rodrigues vs. United States, 1 Wall. 591.

Treadway vs. Sample, 28 Cal. 655.

This court in considering the same question in the case of *More vs. Steinbach, 127 U. S., on pages 81 and 82*, used this language:

"Certain it is that a claimant presenting his claim to the board for examination and confirmation, in order that he might subsequently acquire a patent from the government, is bound by the adjudication of the board. After submitting his claim to its examination and judgment he cannot afterwards be heard to say that in adjudicating upon his title the board erred, or that the land department in determining the boundaries of his claim erred, in order that he may claim, outside of the survey and patent, other lands which he considers covered by his grant. He cannot repudiate a jurisdiction to which he has appealed; and the estoppel extends to parties claiming under him."

Boyle vs. Hinds, 2 Sawyer, 527.

Cassidy vs. Carr, 48 Cal. 339.

Congress, by the 8th section of the act of July 22, 1854, *Vol. 10, page 308, U. S. Stat.*, provided that persons claiming land in the Territory of New Mexico by virtue of grants or concessions made by the govern-

ments of Spain or Mexico, should present such claims to the surveyor general of such Territory, whose duty it should be to ascertain the origin, nature, character and extent of such claims, and make a report thereon to Congress, and the action of such body upon the validity of such claims became final and conclusive. By other laws it became the duty of the land department to survey and establish the boundaries of all claims or grants declared by congress to be valid. Preston Beck, under whom the defendant in error claims, applied to the tribunals so provided by congress, to have his claim adjudicated and passed upon, and we submit that he and his grantees are concluded and estopped by the action of such tribunals, and that they are bound by the acts of the land department in establishing the boundaries of such claims or grants.

The description of the land in the grant papers acted upon by the surveyor general, and as confirmed by congress, is very indefinite and uncertain, such description being as follows:

"On the north land marks of the farm of Don Antonio Ortiz, and the table land of the 'Aguage de la Yegua;' on the south the river Pecos; on the east the table land of Pajarito, and on the west the point of the table land of Las Chupaines."

See *Record, page 9*, being the petition of Pino to the governor for the grant.

This same general description follows all through the proceedings before the authorities of the Mexican government and the surveyor general and the act of Congress confirming the grant contains no description

whatever, but simply confirms the same as recommended by the surveyor general.

It was absolutely necessary that a survey of this claim should be made in order to fix and establish the boundaries thereof, and to segregate it from the public lands of the United States.

It is respectfully submitted that the defendant in error failed to establish his title and right to the possession of the lands in the possession of the plaintiff in error, and that the district court erred in charging the jury to return a verdict in favor of the defendant in error, and that the supreme court of the Territory committed error in affirming the action and judgment of the district court.

Respectfully submitted,

C. H. GILDERSLEEVE.

Attorney for Plaintiff in Error.

IN THE SUPREME COURT

OF THE

UNITED STATES,

OCTOBER TERM, 1892.

James P. Stoneroad, *Plaintiff in Error,* *vs.* George W. Stoneroad, *Defendant in Error.*	Error to the Supreme Court of New Mexico.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

STATEMENT.

George W. Stoneroad, the purchaser of an undivided interest in what is commonly called the Preston Beck grant, a large tract of land in the county of San Miguel, Territory of New Mexico, finding that James P. Stoneroad had wrongfully taken possession of certain parcels of land (indicated by parallelograms colored red on the map "Exhibit B" in the record), situate within the limits of the said land grant, brought against him an action of ejectment in the district court sitting within and for the said county for the recovery of the lands so detained. In that action, the said George W. Stone-

road, in proof of his right of possession alleged in his declaration, showed without contradiction the following facts, viz:

1. The said George W. Stoneroad was by due deraignment of title the owner of one undivided third part of the said land grant, originally known as "La Hacienda de San Juan Bautista del Ojito del Rio de las Gallinas," now situated in the said county and territory, (*Record, folio 26*).

2. The tract of land embraced within the said grant was duly granted and juridically delivered to the original grantee, Juan Esteban Pino, by the Republic of Mexico; the *expediente* or original muniments of the said title being, 1st, the petition of Juan Esteban Pino, dated December 6, 1823, addressed to the acting political chief of New Mexico, whereby the petitioner prayed a grant of certain land "asking for its boundaries the following points: On the north the land marks of the farm of Don Antonio Ortiz and the table land of the "Aguage de la Yegua;" on the south the River Pecos; on the east the table land of Pajarito, and on the west the point of the table land of Los Chupaines;" the said premises to be styled "Hacienda de San Juan Bautista del Ojito del Rio de Las Gallinas," (*Record, folio 12*); 2d, a recommendation of the said petition by the political chief to the provincial deputation, (*Record, folios 12 to 14*); 3d, the relevant archives of the provincial deputation, reciting the said petition as presented by the president (the political chief), referring specifically to the boundaries aforesaid, and containing a resolution

that the land petitioned for be granted to the petitioner, and declaring that "in order that said grant may not be wanting in any requisite this deputation resolved that through its secretary the proofs of his proprietorship to said land be given to him, on which land Mr. Pino shall fix formal boundaries that will make known his own property; granting the same to him in the name of the supreme government of the Mexican nation, and as to a citizen who is in full exercise of his right, not being prevented from the want of any requisite which in his petition is not set forth, from being recognized as a legitimate owner of the land granted to him; observing that Y. E. (your excellency—the political chief—) has considered said petition with the greatest deference." (*Record, folios, 14 and 15*); 4th, the accordant final decree of the political chief, dated December 23, 1823, granting to the said Juan Esteban Pino, by the same specific boundaries, the said tract of land, (*Record, folios 15 and 16*); 5th, the order of the political chief, endorsed on the granting decree (referred to as "this patent"), that, after record of the proceedings, "a copy be furnished to the party interested that it may be a proof in his favor at all times," (*Record, folio 16*); and 6th, the act of juridical possession, dated August 29, 1824, whereby the juridical officer recites an order to him from the political chief, and declares that in compliance therewith, he had placed the grantee "in possession of said Hacienda, pointing out with my attending witnesses the land marks referred to in said grant known in all the jurisdiction of my charge, the boun-

daries set forth in his petition and in the grant which was bestowed to him," and further declares that the right of prescription should commence at the date of the said act, (*Record, folio 17*); the clerical omission in the record to be corrected by reference to the report of the Secretary of the Interior of 1857).

3. In the year 1856, the surveyor general of New Mexico, upon full examination of the private land claim, found that the whole of the said land grant had been purchased by Preston Beck, jr., (*Record, folio 20*), and decided and reported to Congress, among other things, that "the boundaries set forth in the granting decree are natural points, well known to all the community, and, in the absence of a survey, which was not required in the grant, are amply sufficient to designate such portion of land as was intended to be severed from the public domain," and that "the intention of the provincial deputation and the recommendation of the governor, and no conditions being attached to it makes the grant a positive and absolute one, and vests in the grantee a title in fee to all the land embraced within the boundaries set forth in the granting decree," and, accordingly, he recommended the said private land claim to Congress for its favorable final action, advising that Congress cause a survey to be made and "a patent to be issued to the said Preston Beck, jr." (*Record, folios 19 to 24*).

4. The said private land claim was confirmed by Congress, June 21, 1860, (*12 St. 71; Record, folio 19*), and, by section 3 of the confirmation act, it was pro-

vided, with respect to such confirmation, as well as that of other private land claims confirmed by the same act, "that the foregoing confirmation shall only be construed as quit claims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

5. After the said confirmation, a survey of the said grant was made by the United States without notice to the owners of the said grant or either of them, which said survey, marked "Preston Beck Grant," and the course and location of the Pecos River, one of the boundaries of the said grant, are correctly laid down and marked on the said Exhibit B. (*Record, fols. 26, 43*). The said survey was approved by the surveyor-general in November, 1860. (*Record, folio 46*).

6. Preston Beck, Jr., the confirmee of said grant, died a short time before the 21st day of June, 1860, devising his estate, a part of which was said granted tract, to his brother, cousin and seven nephews and nieces, all of whom were non-residents of the Territory of New Mexico. At the time of the making and approval of the said survey, three of the said devisees were minor children and three others were married women.

The said George W. Stoneroad was not one of the said devisees. None of the owners of the said land have ever acquiesced in said survey at any time, (*Record, folio 27*).

7. The defendant in the ejectment (plaintiff in error here) was, at the commencement of the suit and at the

time of the trial, in adverse possession of the said two parcels, (the *locus in quo*,) which, although situate outside of the limits of the said survey, are both within the boundaries specified in the *expediente*, (*Record, folio 26*); that is to say, they are both situate within the area included by a line drawn due north and south through the table land of the Pajarito, as the eastern boundary, the lines of the farm of Don Antonio Ortiz and the table land or mesa of Aguage de la Yegua, as the northern boundary, a line drawn due north and south through the table land of Chupaines, as the western boundary, and the course of the Pecos River, as the southern boundary, that course intersecting the southern terminal points of the said eastern and western boundaries. (*Record, folio 26, and the testimony, folios 28 to 37, in corroboration thereof.*)

Upon the closing of the proofs the defendant in the ejectment moved the court to instruct the jury to find for the defendant, and, the court overruling the motion, the defendant excepted. The said defendant also demurred to the evidence, and the demurrer being overruled, he excepted, (*Record, folios 37 and 38*).

The said defendant also duly moved the court to instruct the jury as follows:

"The jury are instructed that if they find from the evidence in this case that the grant, in evidence in this case, has been surveyed by the proper authorities of the United States, and that such survey has been approved by the proper authorities of the United States as the correct location of said grant, and that the land

in dispute in this case, and in the occupation and possession of said defendant is outside the limits of survey, they must find for the defendant, though they may also believe that the said land so in dispute is within the boundaries of said grant as such boundaries are set forth in the original title papers of said grant, and the recommendation of the surveyor general relative thereto, in evidence in this cause."

The court refused the said instruction and the said defendant excepted. (*Record, folio 38.*)

Under the instruction of the court, excepted to by the said defendant, the jury rendered a verdict of guilty against the defendant. (*Record, folio 39.*)

For the review of the judgment entered in accordance with this verdict, the said defendant sued out a writ of error, and the supreme court of the Territory afterwards rendered the judgment of affirmance which is now brought to the attention of this tribunal, (*Record, folio 41*).

The territorial supreme court, in its opinion, (*Record, folio 45, etc.*), held not only that the title to the whole area claimed by the plaintiff below, was perfect under Mexico, (*Ib. folio 47*), but also that the confirmation by Congress immediately attached to that area and made the title unquestionable by any subsequent executive action, (*Ib. 51, etc.*) It also held, as conceded by both parties, "that where lands are to be surveyed by our government, the rules adopted by the interior department in surveys of grants like the one in question, where boundary calls are given, is to draw a

straight line north and south or east and west through such point on the side of the tract of which it constitutes such boundary to the intersection of the boundaries on the other sides, and, where the call is a meanderable object, such as a river, mesa, mountain or arroyo, it should be meandered to the extent that it constitutes such boundary within the projected lines of the other sides." (*Record, folio 46; Copp's Public Land Laws, Vol. 2, page 1276, Ortiz Mine Case; U. S. vs. Soto, 1 Hoffman L. C. 182; Tyler's Law of Boundaries, 29, 187 and 188*).

It further held, (*Record, folio 51*), that, "the boundaries given and the rule for measurement ascertained, it is mathematically certain what lands were granted."

FIRST POINT.

The plaintiff in the trial court was entitled to the verdict and judgment, both on the principles applicable to a demurrer to evidence and those applicable to a motion to direct a verdict; for, upon the evidence before the court, no other result was possible.

Thornton vs. Bank of Washington, 3 Pet. 36.
Parks vs. Ross, 11 How. 362.
Griggs vs. Houston, 104 U. S. 553.
Anderson Co. vs. Beal, 113 U. S. 227.
Marshall vs. Hubbard, 117 U. S. 415.

SECOND POINT.

The subject matter of the grant and confirmation being certain and there being no place for subsequent executive discretion; the grantee being fully seised of

the premises, under the Mexican law, as declared by its own official expounders and ministers, (*Hornsby vs. United States, 10 Wall. page 237, Fremont's Case, 17 How. 561*); and the confirmee being equally seised, as well as constitutionally protected in his seisin by the immediate operation, *ex proprio vigore*, of the act of confirmation, which definitively vested in him the highest form of title known to the law, such title, absolutely perfect, specific and definite, could not be divested or impaired by any subsequent executive action whatever.

"The law deems every man to be in the legal seisin and possession of land to which he has a perfect and complete title; this seisin and possession is co-extensive with his right, and continues till he is ousted thereof by an actual adverse possession. This is a settled principle of the common law, recognized and adopted by this court."

U. S. vs. Arredondo, 6 Pet. page 743.
Mitchell vs. U. S., 9 Pet. page 743.

The effect of a confirmation like that in the present case is clearly declared in *Langdeau vs. Hanes, 21 Wall. 521*, wherein it was held that "a legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit claim from the government. If the claim be to land with *defined boundaries*, or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title. If the claim be to *quantity*, and not to a *specific tract* capable of

identification, a segregation by survey will be required, and the confirmation will then *immediately* attach the title to the land segregated."

In that case (unlike ours) the confirmatory act even provided for a subsequent survey and patent, but the court said (*Ib. page 529*): "The subsequent clause of the act providing for the issue of a patent to the claimants, when their claim was located and surveyed, took nothing from the force of the confirmation." It also said, (*Ib. page 530*), that a patent "would have added nothing to the force of the confirmation."

The title in question comes fairly within the doctrine of the case just cited, and that doctrine has been followed and emphasized in several later cases in this court.

In *Whitney vs. Morrow, 112 U. S., at page 693*, this court said, with reference to the refusal of the court below to admit a patent issued on the foot of an antecedent confirmation: "It would seem that the plaintiffs offered a patent to Gardapier, also issued in 1870, and that its admission was refused. We cannot see what bearing it may have had as a copy of it is not contained, nor are its contents stated, in the record. It could not deprive the confirmee of the land confirmed to him by the act of Congress, if that was by specific boundaries, distinguishing and separating it from other parcels, or was capable of identification. If, by a legislative declaration, a specific tract is confirmed to any one, his title is not strengthened by a subsequent patent from the government. That instrument may be

of great service to him in proving his title, if contested, and the extent of his land, especially when proof of its boundaries would otherwise rest in the uncertain recollection of witnesses. It would thus be an instrument of quiet and security to him, but it could not add to the validity and completeness of the title confirmed by the act of Congress."

The survey in question, being made without the privity of the grant owners, they have as much right to question it as a senior grantee or patentee would have to question a conflicting junior patent, as was successfully done in *Doolan vs. Carr, 125 U. S. page 636.*

So, in *St. Paul & Pac. R. R. Co. vs. Northern Pac. R. R. Co. 139 U. S. at page 6*, this court says: "There are many instances in the legislation of Congress, where patents are authorized to be issued to parties in further assurance of their title, notwithstanding a previous legislative grant to them, or a legislative confirmation of a previously existing claim. The previous grant or confirmation is in no respect impaired thereby or its construction affected."

Langdeau vs. Hanes, supra. is also approved in *Deseret Salt Co. vs. Tarpey, 142 U. S. 251, and McNee vs. Donahue, 142 U. S. 598.*

THIRD POINT.

It is manifest that the parties to the original grant had in contemplation a specific tract of land with well defined boundary calls, all declared by the officiating juridical officer, in his act of possession, to be "known in all the jurisdiction of my charge," which tract was

fully bounded, at its southern or lower boundary, by the Pecos River; at its northern or upper boundary, by the division line (as to which there is no dispute) of the farm of Antonio Ortiz and by the line of the mesa or table land of Aguage de la Yegua; at its eastern boundary by a line drawn north and south through the small mesa or table land of Pajarito, so as to intersect the Aguage de la Yegua on the north and the Pecos river on the south; and, at its western boundary, by a similar line drawn through the small mesa or table land of Chupaines, so as to intersect the division line of Antonio Ortiz, on the north, and the Pecos river, on the south.

It will be observed that the surveyor followed this theory correctly in his west line; for he drew that due north and south, through the point of Chupaines, so as to connect the farm line on the north with the river on the south. The Chupaines reaches the farm line, but it is distant several miles from the river. Nevertheless, the surveyor, properly treating the Chupaines as a point in a boundary line extending due north and south, protracted the line accordingly several miles south of that point, so as to reach the river.

In this, the surveyor followed the true rule, indicated by the opinion in *Higueras vs. U. S., 5 Wall. at page 837*, wherein this court said, with reference to a grant course given in the following words, (*Ib. page 830*), "thence east along the sierra to the line of the land known as the Rancho of José Maria Alviso," that the "third objection is that the second line, if run from the lone

tree along the Sierra, would not intersect the line of the Rancho mentioned in the decree. But the objection is purely a technical one, and as such is entitled to no weight. Alviso's land did not, it is true, extend quite to the Sierra, or if it did his northern line, as exhibited on the Diseños in the record, was not so delineated. *Protract the line* in the same direction, to the Sierra, and the whole foundation of the objection is gone. The intention of the decree is obvious, and there can be no doubt that the surveyor general was right in regarding that supposed defect as supplied by necessary implication from the language of the decree."

But, in attempting to fix the east boundary, the surveyor fell into gross errors. Instead of taking the west point of the Mesa of Pajarito as the point of departure, he took a point of another and distinct elevation lying several miles west of the Pajarito point, (*Record, folios 29, 32, 34 and Map Exhibit B*). Instead of holding the Pecos river as the only southern boundary, he made an arbitrary southern boundary, by running a due east and west line westerly from the eastern point, as falsely assumed. Thus, he left upwards of ten miles of the surveyed southern boundary, so called, untouched by the river and many miles distant northerly therefrom. Upon this error, the defendant in the ejectment attempts to justify his adverse appropriation of parcel No. 2, as designated on the exhibited map. Finally, the surveyor, in still grosser error, practically ignored the long meandering line of the Mesa del Aguaje de la Yegua, intended by the parties to the grant to be, for

upwards of fourteen miles, a part of the northern boundary, and arbitrarily ran, from the falsely assumed eastern point, a northwest line to a point southeast of that mesa, and thus attempted to destroy all significance in the reference by the grant muniments to that controling land mark. Upon this last mentioned error, the said defendant attempts to justify his adverse appropriation of parcel No. 1, as designated on the said map.

It is preposterous to assume that, if the parties to the original grant had intended as boundaries the lines adopted by this *ex parte* and usurpative survey, they would have referred to the Pecos river as the only southern boundary; for, in view of the oblique course of that stream, it is evident that it appears in the survey more appropriately as the western than as the southern boundary. From the clear and confident terms of the granting papers, and especially the phraseology of the act of possession, a candid mind must admit that the boundaries, as declared and understood by the parties, were calls, land marks, and obvious connecting lines, plainly to be seen and comprehended by the simple peasantry of the country, and not artificial and imaginary lines ascertainable only by instrumental survey. It was evidently intended and understood that any one upon the granted tract looking toward the north should see distinctly before him the land marks constituting the northern boundary—not only the monuments of the division line of the Ortiz ranch, but also, and more prominently and obviously, the grand natural barrier of the Mesa del Aguage de la Yegua, as

it confronted the spectator for many miles, extending from the eastern point of the division line of the ranch, to and beyond a line protracted north and south through the western point of the Pajarito. Yet the surveyor, not merely ignores, as we have shown, the great natural land mark of that Mesa, but substitutes an arbitrary imaginary line, running northwesterly, utterly inconsistent with the motive of the parties in introducing the Mesa as a visible, tangible, certain boundary. The same reasoning demands the adoption of the Pecos river as the sole and exclusive southern boundary.

The practice of the land office, as evidenced by the public maps exhibiting the numerous surveyed land claims, such, for example, as the Mora grant and the Eaton grant, as well as the authorities cited by the territorial supreme court, and also the plain meaning of the title papers, fortify our contention as to the true interpretation of the boundary calls of the grant.

Rancho Pueblo of San Cristobal, Copp's Public Land Laws, Vol. 2, p. 1280.
Inhabitants of Ipswich, &c., 30 Mass. 431.
Dall vs. Brown. 59 Mass. 289.

FOURTH POINT.

Although, in view of the perfect nature of the grant and confirmation, the confirmee might have stood upon the grant and confirmation alone, even if the confirmatory act had provided for a survey and patent, as distinctly held in *Langdeau vs. Hanes, 21 Wall. 521*, yet the absence from the confirmatory act of any such

provision is a persuasive argument in favor of the independent integrity, in all respects, of his title.

Our researches among the statutes relative to surveys of private land claims in New Mexico have resulted in failure to discover any statute militating against the foregoing views. By the appropriation act of June 12, 1858, (*11 St. 319, 321*), the sum of $15,000 was appropriated "for surveying such of the private claims in New Mexico as shall have been confirmed by Congress, including expenses incurred by the surveyor general in adjudicating the same." This statute is material only in respect of indefinite, unspecific grants.

The next statute on the subject that we can find is "An Act for the survey of grants or claims of land," approved June 2, 1862, (*12 St. 410*), which authorized surveys of private land claims, upon the request and at the expense of claimants, but denied any effect to such surveys, except as *prima facie* evidence of the true location, and declared that no grant should "be deemed incomplete for want of a survey or patent when the land granted may be ascertained without a survey or patent."

Indeed, so far as we are informed, no statute was ever passed under which the private land claims confirmed by the confirmatory act in question could be patented, until the passage of the act of March 3, 1869, (*15 St. 342*), and it was under this act that the Maxwell land grant and others confirmed in 1860 have been patented, so far as they have been (*121 U. S. p. 326*).

It would be monstrous to hold that a perfect title to a

specific tract, valid under Mexico, protected by solemn treaty, and made consummate by legislative confirmation in the year 1860, and thus put under the protection of the constitution, could be in any manner divested or impaired, without due process of law, in any subsequent year. Since the date of the confirmation at least, this title has been subject to the ordinary laws of the land, administered by constitutional tribunals, and protected from capricious political interference. Any subsequent adverse proceedings in the land office that may be referred to by counsel for the plaintiff in error, or by the Attorney General, are wholly irrelevant and immaterial.

(*112 U. S. page 695*).

No argument is needed to impress upon the court the superior status of a definite, specific and perfect grant, confirmed and quit claimed by the national legislature, over that of the inferior, inchoate and imperfect titles, upon which Congress declined to pass directly, and which it left to the determination of special tribunals, whose designated course of procedure involved the consideration of all questions of survey, as a condition precedent to the issue of a patent, intended by statute as the necessary and ultimate evidence of a release of the affected lands from political jurisdiction. Hence, it is unnecessary to discuss the scope and effect of the numerous decisions relating to the confirmation, survey and patenting of imperfect Mexican grants of lands in California.

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